

TAB 25

**INSTRUCTIONS FOR USE
COST REIMBURSEMENT TERMS AND CONDITIONS**

This Tab contains General Provisions for Cost Reimbursement Subcontracts and Special Provisions for Cost Reimbursement Subcontracts for Construction or Demolition. Cost reimbursement terms and conditions are appropriate when Management has determined that the uncertainties associated with the proposed Statement of Work do not permit the costs and risks of performance to be estimated with sufficient accuracy to support a fixed price arrangement.

A cost reimbursement subcontract may only be used when the proposed subcontractor's accounting system is adequate for determining costs applicable to the Subcontract and appropriate Contractor surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.

These General and Special Provisions shall not be used in the acquisition of Commercial Items.

GENERAL PROVISIONS (GPs) FOR COST REIMBURSEMENT SUBCONTRACTS

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GENERAL PROVISIONS FOR COST REIMBURSEMENT SUBCONTRACTS

GP.1 DEFINITIONS

Unless specifically stated elsewhere in this Subcontract, as used throughout this Subcontract, the following terms shall have the meaning set forth below:

1. "Government" means the United States of America
2. "DOE" means the United States Department of Energy or any duly authorized representative thereof, including the Manager, Rocky Flats Field Office, DOE
3. "Contractor" means the party issuing this Subcontract.
4. "Subcontractor" means the party to whom this Subcontract is awarded.
5. "Subcontract Signature Page" shall mean the document executed by the parties, to which the terms and conditions are attached and incorporated.
6. "Days" means calendar days.
7. "Site" means the Rocky Flats Environmental Technology Site (RFETS) or other RFETS leased facilities.

GP.2 RELATIONSHIP OF THE PARTIES

Subcontractor, including its employees, agents, or representatives, shall be deemed an independent Subcontractor, and not an agent or employee of Contractor. All benefits, coverages, and claims of its employees shall be the sole obligation of Subcontractor. Unless specifically authorized by Contractor, Subcontractor shall have no authority to make commitments of any kind on behalf of Contractor.

GP.3 CONFIDENTIALITY OF INFORMATION

If the Subcontractor is given access to proprietary business, technical, or financial information belonging to Contractor or third parties, including the Government, the Subcontractor shall, after receipt thereof, protect such information, and shall not appropriate such information for its own use or disclose such information to third parties unless it receives prior specific written authorization to do so by the Contractor.

The foregoing obligations shall not apply to information:

1. which is in the public domain when the Contractor discloses it to the Subcontractor
2. which entered the public domain through no fault of the Subcontractor after it was disclosed by the Contractor
3. which was in the Subcontractor's possession free of any obligation for the Subcontractor to hold it in confidence
4. which is disclosed to the Subcontractor by a third party who has the lawful right to disclose the information.

The Subcontractor shall obtain a written Employee Non-Disclosure Agreement from each employee performing under this Subcontract, that is substantially in compliance with the sample agreement attached hereto, prior to permitting them access to information covered by this clause.

The Subcontractor shall flow this clause down to all lower-tier subcontractors.

GP.4 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

Documents originated by Subcontractor or furnished by the Contractor to the Subcontractor, in connection with this Subcontract, may contain Unclassified Controlled Nuclear Information (UCNI) as determined pursuant to Section 148 of the Atomic Energy Act of 1954, as amended. The Subcontractor shall be responsible for protecting such information from unauthorized dissemination in accordance with the requirements of 10 CFR 1017.17. Such protections include marking the UCNI information appropriately and complying with the following requirements:

1. Protecting the information from unauthorized dissemination and access to it. Matter that is not in use shall be stored in a secured container, e.g., locked desk, file cabinet, or in a location where access is limited, such as a locked or guarded office or controlled access facility.
2. Limiting reproduction of UCNI to the minimum extent necessary and, with regard to reproduced information, marking and protecting it in the same manner as the original document.

3. Packaging the UCNI that is to be transmitted in such a manner as to prevent disclosing that the package may contain UCNI.
4. Destroying the information in accordance with 10 CFR 1017.17.

UCNI shall not be electronically sent off-Site via e-mail without Contractor's prior written approval. Contractor-approved encryption methods shall be used. Users of Site e-mail are only authorized to transmit UCNI without Contractor-approved encryption when sending to individuals whose computers are connected to the Contractor UCNI-certified network and who possess a need-to-know the specific UCNI information.

GP.5 PUBLIC RELEASE OF INFORMATION

Information, data, photographs, sketches, advertising, announcements, denial or confirmation of same, etc., relating to this Subcontract, which the Subcontractor desires to release or publish, shall be submitted to the Contractor for approval ten (10) weeks before the desired release date. As part of the approval request, the Subcontractor shall identify the specific media to be used as well as other pertinent details of the proposed release.

All releases, regardless of tier or supplier, must have the prior written approval of the Contractor. The Subcontractor shall include all provisions of this clause, including this sentence, in all lower-tier subcontracts.

GP.6 ADMINISTRATION OF SUBCONTRACT

Subcontract Administrator (SA). Contractor shall designate to Subcontractor, in writing, a Subcontract Administrator (SA) and his or her mailing address, who shall have the sole authority to enter into and administer this Subcontract on behalf of Contractor. Unless Subcontractor is otherwise notified by SA in writing, or as otherwise set forth by the Subcontract Statement of Work; the SA shall administer Contractor's responsibilities under this Subcontract. Subcontractor shall promptly notify the SA of all facts or circumstances that may change the scope, cost, or schedule of Subcontract performance.

Contractor Technical Representative (CTR). The CTR is an individual designated by the SA, to act as his or her technical representative. The CTR is responsible for all technical aspects of the Subcontract, including but not necessarily limited to, daily oversight of Subcontractor's work, comprising technical monitoring, inspection and approval of the work, and other functions of a technical nature not involving a change in the scope, cost, terms, or conditions of the Subcontract. The written Designation of Authority, notifying Subcontractor of the identity and mailing address of its CTR and, if applicable, alternate CTRs, shall be provided to Subcontractor at the time of Notice-to-Proceed.

The CTR has the authority to provide technical direction to Subcontractor on performance of the Statement of Work. However, Subcontractor shall only accept technical direction if provided in writing, and if within the Statement of Work of the Subcontract. Technical direction shall not:

1. authorize Subcontractor to exceed the total funds obligated on the Subcontract;
2. entitle Subcontractor to any increase in the total amount set forth in the Subcontract,
3. change any of the express terms and conditions of the Subcontract; or
4. interfere with Contractor's rights under the terms and conditions of the Subcontract.

If, in the opinion of the Subcontractor, any technical direction violates the prohibitions set forth above, the Subcontractor shall not proceed but shall promptly verbally notify the SA of the direction and reason(s) the direction violates the provisions of this clause. The Subcontractor shall confirm this notification in writing within five (5) days from receipt of the technical direction. The SA shall render a decision on whether the technical direction is or is not within the statement of work and whether a change order will be issued pursuant to the Changes clause. This decision shall be issued and/or confirmed in writing, and the Subcontractor shall promptly comply with the direction. A disagreement between the parties regarding the foregoing shall be subject to the Disputes clause.

To promote timely and effective Subcontract administration, all correspondence (excluding invoices) submitted under this Subcontract shall include the Subcontract number and shall be subject to the following procedures:

1. Technical Correspondence. Technical correspondence shall be addressed to the CTR with an information copy of all correspondence to Contractor's SA. As used herein, the term "technical correspondence" excludes correspondence related to patent or technical data issues and correspondence that proposes or otherwise involves waivers, deviations, or modifications to the requirements, terms and conditions, or cost of this Subcontract.
2. Other Correspondence. All other correspondence shall be addressed to Contractor's SA, with information copies to the CTR.

Revisions to the Designations of Authority provided to Subcontractor by Contractor or changes in the address(es) where Subcontractor is to submit deliverables under this Subcontract may be accomplished by written notification from Contractor, without a formal Subcontract modification.

GP.7 ASSIGNMENT

Neither this Subcontract/Purchase Order nor any interest therein, money due, nor claim thereunder, including claims for money due or accounts payable, shall be assigned or transferred by Subcontractor except as expressly authorized in writing by Contractor. No assignment agreement shall modify or negate Contractor's rights under this Subcontract to withhold or set-off funds due Subcontractor.

This Subcontract, or any part thereof, and all rights of Contractor hereunder may be assigned and transferred to the Department of Energy or any designee of Contractor or Department of Energy, provided that written notice thereof is given to Subcontractor.

GP.8 INTEREST

All amounts that become due and payable by the Subcontractor to the Contractor under this Subcontract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be ten (10) percent per annum until the amount is paid.

Amounts shall be due at the earliest of the following dates:

1. The date fixed under this Subcontract.
2. The date of the first written demand for payment consistent with this Subcontract, including any demand resulting from a default termination.
3. The date the Contractor transmits to the Subcontractor a proposed modification to this Subcontract that confirms completed negotiations establishing the amount of debt.

The interest charge made under this clause may be reduced at the sole discretion of Contractor.

GP.9 ALLOWABLE COST AND PAYMENT

The Contractor shall make payments to the Subcontractor when requested as work progresses, but not more than monthly, in amounts determined to be allowable by the Contractor in accordance with the provisions of this Subcontract and Part 31 of the FAR, as supplemented or modified by Subpart 931 of the DEAR, in effect on the date of this Subcontract. The Subcontractor shall submit to the Contractor, in such form and reasonable detail as the Contractor may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this Subcontract. The Subcontractor should submit an acceptable invoice by the fifteenth (15th) calendar day subsequent to the month the services were provided. Failure to submit an invoice by the aforementioned time may result in a delay of payment.

For the purpose of reimbursing allowable costs (except as provided below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the terms "costs" includes only –

1. Those recorded costs that, at the time of the request for reimbursement, the Subcontractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the Subcontract;
2. When the Subcontractor is not delinquent in paying costs of Subcontract performance in the ordinary course of business, costs incurred, but not necessarily paid, for the following:
 - a. materials issued from the Subcontractor's inventory and placed in the production process for use on the Subcontract;
 - b. direct labor;
 - c. direct travel;
 - d. other direct in-house costs; and
 - e. properly allocable and allowable and reasonable indirect costs, as shown in the records maintained by the Subcontractor for purposes of obtaining reimbursement under Government subcontracts; and
3. The amount of progress payments that have been paid to the Subcontractor's lower-tier subcontractors under similar cost standards.

Subcontractor contributions to any pension, profit-sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; provided that the Subcontractor pays the contribution to the fund within thirty (30) days after the close of the period covered. Payments made thirty (30) days or more after the close of a period shall not be included until the Subcontractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Subcontractor actually makes the payment.

Notwithstanding the audit and adjustment of invoices or vouchers as described below for final payment, allowable indirect costs under this Subcontract shall be obtained by applying indirect cost rates established in accordance with the description of billing rates given below.

The Subcontractor invoice documentation (i.e., payment evidence and/or individual daily job time cards) must include the following statement along with the signature of the Contractor Technical Representative:

As the Rocky Flats Contractor Technical Representative, I agree that the hours cited above were for services received by Contractor, that the hours worked were reasonable, performed satisfactorily, and were within the scope and time frame authorized under the Subcontract. If any discrepancies were detected, I have noted them accordingly. The computation of the "invoice" amount is correct. Absence of comments documents acceptance. If questions arise regarding poor performance on the part of the Subcontractor, I will contact the Subcontract Administrator before taking any action.

The Subcontractor shall certify each request for payment as follows:

I hereby certify, to the best of my knowledge and belief, that the amounts requested are only for performance in accordance with the specifications, terms, and conditions of the Subcontract; payments to lower-tier subcontractor and suppliers, covered by this certification, have been made in accordance with the Subcontract; and this request for payment does not include any amounts that the Subcontractor intends to withhold or retain from a subcontractor or supplier.

Name: _____

Title: _____

Date: _____

Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the FAR in effect for the period covered by the indirect cost rate proposal.

The Subcontractor shall, within ninety (90) days after the expiration of each of its fiscal years, or by a later date approved by the Contractor, submit to the Contractor and, if required by DOE procedures, to the cognizant audit activity, proposed final indirect cost rates for that period and supporting cost data specifying the Subcontract to which the rates apply. The proposed rates shall be based on the Subcontractor's actual cost experience for that period. The appropriate Contractor or Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify the following:

1. The agreed upon final annual indirect cost rates;
2. The bases to which the rates apply;
3. The period for which the rates apply;
4. Any specific indirect cost items treated as direct costs in the settlement; and
5. The affected Subcontract, identifying any with advance agreements or special terms and the applicable rates.

The understanding shall not change any monetary ceiling, subcontract obligation, or specific cost allowance or disallowance provided for in this Subcontract. The understanding is incorporated into this Subcontract upon execution.

Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

Within one hundred twenty (120) days (or longer if approved in writing by the Contractor) after settlement of the final annual indirect cost rates for all years of a physically complete subcontract, the Subcontractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

If the Subcontractor fails to submit a completion invoice or voucher within the time specified above, the Contractor may take the following actions:

1. determine the amounts due the Subcontractor under the Subcontract; and
2. record this determination in a unilateral modification to the Subcontract.

This determination constitutes the final decision of the Contractor in accordance with the Disputes clause.

Until final annual indirect cost rates are established for any period, the Contractor shall reimburse Subcontractor at billing rates established by the Contractor or by an authorized representative (cognizant auditor), subject to adjustment when the final rates are established. These billing rates —

1. shall be the anticipated final rates; and
2. may be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

Quick close-out procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

At any time or times before final payment, the Contractor may have the Subcontractor's invoices or vouchers and statements of cost audited. Any payment may be —

1. reduced by amounts found by the Contractor not to constitute allowable costs; or
2. adjusted for prior overpayments or underpayments.

Upon approval of a completion invoice or voucher submitted by the Subcontractor in accordance with this clause, and upon the Subcontractor's compliance with all terms of this Subcontract, the Contractor shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

The Subcontractor shall pay to the Contractor any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Subcontractor or any assignee under this Subcontract, to the extent that those amounts are properly allocable to costs for which the Subcontractor has been reimbursed by the Contractor. Reasonable expenses incurred by the Subcontractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contractor. Before final payment under this Subcontract, the Subcontractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver the following:

1. An assignment to the Contractor, in form and substance satisfactory to the Contractor, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Subcontractor has been reimbursed by the Contractor under this Subcontract; and
2. A release discharging the Contractor, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this Subcontract, except the following:
 - a. Specified claims stated in exact amounts or in estimated amounts when the exact amounts are not known;
 - b. Claims (including reasonable incidental expenses) based on liabilities of the Subcontractor to their parties arising out of the performance of this Subcontract; provided that the claims are not known to the Subcontractor on the date of the execution of the release, and that the Subcontractor gives notice of their claims in writing to the Contractor within six (6) years following the release date or notice of final payment date, whichever is earlier, and
 - c. Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Subcontractor under the patent provisions of this Subcontract excluding, however, any expenses arising from the Subcontractor's indemnification of the Contractor or the Government against patent liability.

GP.10 NOTICE OF INTENT TO DISALLOW COSTS

Notwithstanding any other clause of this Subcontract, the following provisions apply:

1. The Contractor may at any time issue to the Subcontractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this Subcontract that have been determined not to be allowable under the Subcontract terms; and
2. The Subcontractor may, after receiving a notice under Paragraph 1 above, submit a written response to the Contractor, with justification for allowance of the costs. If the Subcontractor responds within sixty (60) days, the Contractor shall, within sixty (60) days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Contractor's rights to take exception to incurred costs.

GP.11 REPORTING REQUIREMENTS

Work Breakdown Structure. Except as provided for elsewhere in the Subcontract, the Work Breakdown Structure, as approved by the Contractor, shall provide the basis for all reports required under this Subcontract. The Work Breakdown Structure shall be derived from the Statement of Work described in this Subcontract and shall also conform to any implementation guidance that may be provided by the Contractor.

Schedules. For all contracts whose value is greater than \$12.5 million per year or if specified by the Contractor, the Subcontractor shall use critical-path method schedules that are developed on an industry-recognized software (Primavera Project Planner or similar).

Earned Value Measurement System. For all contracts whose value is greater than \$12.5 million per year or if specified by the Contractor, the Subcontractor will use a commercially accepted earned-value measurement system (Reference: "A Guide to the Project Management Book of Knowledge", Project Management Institute, 1996) for performance reporting.

Periodic Plans and Reports. The Subcontractor shall submit periodic cost, schedule, and technical performance plans and reports in such form and substance as required by the Contractor. These periodic plans and reports shall be submitted at the interval and to the addresses and in the quantities specified by the Contractor. Where specific forms are required for individual plans and reports, the Contractor shall provide such forms to the Subcontractor. The plans and reports expected to be submitted by the Subcontractor are described generally as follows:

1. General Management Reports summarize, in a narrative, schedule, labor, cost plans, cost status, and corrective action plans to correct variances, and provide explanations of status variances from plans, forecasted completion dates for major project milestones, and an estimate at completion.
2. Schedule/Labor Cost Reports provide information on schedule, labor, cost plans, and cost status.
3. Cost Performance Measurement Reports provide information regarding the actual cost of work performed relative to the budgeted cost for work performed and relative to the budgeted cost for work scheduled. They also provide for reporting data on performance and baseline maintenance and estimates at completion.
4. Technical Reports are the means by which scientific, technical, and engineering information acquired in the performance of the work is disseminated.

The Subcontractor shall prepare plans and reports in such a manner as to provide for the following:

1. Consistency with the Subcontract Statement of Work and the approved Project Baseline Description number; and
2. Correlation of data among the various plans and reports.

Changes in Work Effort. The reporting system established and maintained by the Subcontractor pursuant to this clause shall recognize changes in work effort directed by the Contractor, as provided for in the Work Control System. During performance of this Subcontract, the Subcontractor shall update and/or change with approval from the Contractor, as appropriate, the Work Breakdown Structure (including any diagrams, supporting work descriptions, and Work Breakdown Structure dictionary), the Schedule and the Cost Estimate to reflect changes in Scope of Work or discrete Work Authorization Directives. The Subcontractor's reporting system shall be able to provide for the following at the Work Breakdown Structure Level 2, or such lower level, as specified by the Contractor:

1. Incorporate contractual changes affecting estimated cost and schedule in a timely manner.
2. Reconcile estimated costs for those elements of the Work Breakdown Structure or discrete cost accounts, and for those elements at the lowest level of the project summary Work Breakdown Structure, with current performance measurement budgets in terms of—
 - a. changes to the authorized work; and
 - b. internal replanning in the detail needed by management for effective control.
3. Report changes to records pertaining to work performed that will change previously reported costs for correction of errors and routine accounting adjustments.
4. Report revisions to the subcontract's estimated costs for Contractor-directed changes to the contractual effort.

Access to Subcontractor Documents. The Subcontractor agrees to provide the Contractor, or designated authorized representatives, access to any and all information and documents comprising the Subcontractor's reporting system.

GP.12 TITLE

Unless specified elsewhere in this Subcontract, title to items furnished under this Subcontract shall pass to Contractor and/or Government upon acceptance, regardless of when or where Contractor takes physical possession.

GP.13 CHANGES

Contractor may at any time, by written Change Order, and without notice to the sureties, if any, make changes within the general scope of this Subcontract. Additionally, Contractor may also make changes outside the general scope of this Subcontract, provided Subcontractor agrees, in writing, with the changes made.

Changes made to this Subcontract shall be incorporated by written modification only and shall not be binding unless signed by Contractor's SA. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Subcontract, Subcontractor may request an equitable adjustment. If Contractor agrees that it is a change of scope, Contractor shall make an equitable adjustment in the Subcontract price, the delivery schedule, or both, and shall modify the Subcontract.

Subcontractor must assert its right to an adjustment under this clause within five (5) days from the date of receipt of the Change Order, and shall specify in full and complete detail the basis for its assertion of its right to an adjustment within seven (7) days

thereafter, unless otherwise stipulated in the Change Order. Claims asserted thereafter shall be deemed waived by Subcontractor. Once a change is finalized and mutually agreed to by the parties, unless otherwise indicated, Subcontractor's acceptance of the Change Order modification constitutes Subcontractor's acknowledgement of full and final compensation for all cost, schedule and other impacts arising out of or relating to matters addressed in the Change Order and Subcontractor's release of all claims arising out of or relating to the same. In the event that Subcontractor elects not to accept the Change Order modification, Subcontractor must so notify Contractor's SA, in writing, within ten (10) days of issuance of the Change Order modification. Failure to so notify Contractor within the time period stipulated shall be evidence of acceptance of the Change Order modification.

Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse Subcontractor from proceeding with the Subcontract as changed by Contractor.

GP.14 NOTIFICATION OF POTENTIAL CHANGES

Subcontractor shall not be entitled to the payment of any additional compensation for any cause other than as specifically provided for in this Subcontract, including without limitation, any act, or failure to act by Contractor or the Government or any other occurrence, unless Subcontractor shall have given Contractor due written notice of any such conduct or occurrence that Subcontractor regards as a change or potential change to the work or terms. Subcontractor's written notice of change shall set forth all facts required to allow the evaluation of the alleged change and reasons and merits of such change. Notice shall be given as soon as possible and prior to the time that Subcontractor begins performance of any additional work giving rise to the potential change, but in no event more than five (5) days after the occurrence of the event giving rise to the potential change.

The Contractor may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000. The Subcontractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Subcontractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the Contractor or until the matter is conclusively disposed of in accordance with the Disputes clause.

Subcontractor hereby agrees that it shall have no right to additional compensation, excuse for nonperformance, or any claim that may be based on any act, failure to act, or occurrence for which timely written notice of potential changes as herein required was not properly submitted to Contractor.

GP.15 PRICING OF MODIFICATIONS

When costs are a factor in any price adjustment under this Subcontract, the cost principles and procedures in FAR Part 31, as supplemented or modified by Subpart 931 of the DEAR, in effect on the date of this Subcontract apply.

GP.16 EXCUSABLE DELAYS

Time is of the essence in Subcontractor's performance of work. Subcontractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Subcontractor and without its fault or negligence, such as, acts of God or the public enemy, acts of the Government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather and sabotage. No such interruption shall relieve Subcontractor of its duty to perform or give rise to any damages or additional compensation from Contractor. In the event of such interruption, Subcontractor's sole remedy against Contractor shall be to seek an extension of time for performance equal to the time lost as a result of said interruption. Subcontractor shall notify the SA as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the SA of the cessation of such occurrence. Subcontractor shall provide all notices required hereunder to Contractor hereunder within five (5) days after the condition is identified.

GP.17 TERMINATION

The Contractor may terminate performance of work under this Subcontract in whole or, from time to time, in part, if —

1. The Contractor determines that a termination is in the Contractor's interest; or
2. The Subcontractor defaults in performing this Subcontract and fails to cure the default within ten (10) days (unless extended by the Contractor) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

The Contractor shall terminate by delivering to the Subcontractor a Notice of Termination specifying whether termination is for default of the Subcontractor or for convenience of the Contractor, the extent of termination, and the effective date. If, after termination for default, it is determined that the Subcontractor was not in default or that the Subcontractor's failure to perform or

to make progress in performance is due to causes beyond the control and without the fault or negligence of the Subcontractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Contractor.

After delivery and receipt of the Notice of Termination, the rights and obligations of the parties shall be the same as set forth in the terms of FAR 52.249-6, "Termination (Cost Reimbursement)(Alt 1)" in effect on the date of this Subcontract, which is incorporated herein by reference and made part hereof, and modified as follows in the succeeding paragraph. The Subcontractor may obtain the full text of the referenced clause at <http://www.arnet.gov/far>. Wherever necessary to make the context of the clause applicable to this Subcontract, the term "Contractor" shall mean "Subcontractor", the term "subcontractor" shall mean lower-tier subcontractor, the term "Contract" shall mean this Subcontract, the term "subcontract" shall mean lower-tier subcontract, and where noted or necessary to derive proper meaning, the terms "Government," "Contracting Officer," and equivalent phrases shall mean Contractor.

The period in paragraph (d) of the FAR clause for the submission of complete termination inventory schedules is reduced from one hundred twenty (120) days to thirty (30) days, and the period in paragraph (f) of the FAR clause within which Subcontractor shall submit a final termination settlement proposal is reduced from one (1) year to six (6) months.

GP.18 STOP WORK ORDER

Contractor may, at any time, by written order to Subcontractor, require Subcontractor to stop all, or any part, of the work called for by this Subcontract for a period of up to ninety (90) days after the order is delivered to Subcontractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop-work order is delivered to Subcontractor, or within any extension of that period to which the parties shall have agreed, Contractor shall either –

1. Cancel the stop-work order; or
2. Terminate the work covered by the order as provided in the Termination for Convenience clause of this Subcontract.

If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, Subcontractor shall resume work. Contractor shall make an equitable adjustment in the delivery schedule or Subcontract price, or both, and the Subcontract shall be modified, in writing, accordingly, if –

1. The stop-work order results in an increase in the time required for, or in Subcontractor's cost properly allocable to, the performance of any part of this Subcontract; and
2. Subcontractor asserts its right to the adjustment within thirty (30) days after the end of the period of work stoppage.

If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of Contractor, Contractor will consider reasonable costs resulting from the stop-work order in arriving at the termination settlement.

Contractor shall not be liable to Subcontractor for damages or loss of profits because of a stop-work order issued under this clause.

Contractor may also order Subcontractor, in writing, to suspend, delay, or interrupt all or any part of the work of this Subcontract for the period of time that Contractor deems is appropriate for the convenience of Contractor.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted, for any reason that is ultimately determined to be of Contractor's own fault and making, Subcontractor may be entitled to an equitable adjustment for any increased costs caused by the unreasonable suspension, delay, or interruption. However, no adjustment shall be made under this clause, to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of Subcontractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Subcontract.

GP.19 INDEMNIFICATION

Except as limited by other paragraphs of this clause, Subcontractor shall defend, indemnify and hold harmless Contractor, its agents and employees, its subcontractors and suppliers, and their agents and employees (party indemnified) from and against any and all claims, suits, actions, liens, loss, damage, costs, liability or expenses (including attorney's fees) attributable to bodily injury, sickness, diseases, death, damage or destruction of property (including the loss of use of property) or patent or copyright infringement, caused by or arising out of Subcontractor's, its agents or employees performance of work under this Subcontract. Subcontractor shall also reimburse any party indemnified hereunder for all costs (including attorney's fees) incurred to enforce this indemnity clause.

Should any person assert a claim or institute a suit, action, or proceeding against a party indemnified hereunder involving the manner or sufficiency of Subcontractor's performance of work, upon request of the party indemnified, Subcontractor shall, at its own expense, promptly assume the defense of such claim, suit, action, or proceeding and shall, except as limited by other paragraphs of this clause, indemnify and hold harmless the party indemnified from and against any liability, loss, damage, or expense (including attorney's fees) arising out of or related to such claim, suit, action, or proceeding.

Subcontractor's obligation to indemnify hereunder applies only to the extent that the liability is not covered under Contractor Controlled Insurance Program (CCIP), if applicable.

GP.20 PRICE-ANDERSON AMENDMENTS ACT

The Department of Energy has promulgated Nuclear Safety Rules in implementation of the Price-Anderson Amendments Act (PAAA) of 1988, Public Law 100-408, August 20, 1988. These rules govern the conduct of persons involved in DOE nuclear activities, and, in particular, are designed to achieve compliance with DOE nuclear safety requirements. Violation of the applicable rules may provide a basis for the assessment of civil and criminal penalties under the PAAA. Nuclear Safety Rules subject to enforcement under PAAA are, 10 CFR 820, Procedural Rules for DOE Nuclear Activities, 10 CFR 830, Nuclear Safety Management, Subpart A, Quality Assurance Requirements, and 10 CFR 835, Occupational Radiation Protection. This Subcontract is subject to the requirements of the above rules.

The Subcontractor shall indemnify Contractor for any civil penalties levied against Contractor, pursuant to Section 234A of the Atomic Energy Act of 1954, as amended, for any violations of applicable DOE nuclear-safety related rules, regulations, or orders arising out of or in connection with Subcontractor's or its lower-tier subcontractors' and suppliers' performance of this Subcontract.

GP.21 DISPUTES

In the event that the parties cannot through reasoned negotiations, reach agreement on any issue arising out of this Subcontract, the issue will be considered a dispute and shall be resolved in accordance with the following:

1. If efforts at resolution through good faith discussions and/or negotiations fail to resolve the dispute, the parties agree that before taking any other action, they will consider the use of Alternate Dispute Resolution (ADR). In the event that non-binding mediation or arbitration is agreed upon, the site of the proceedings shall be Denver, Colorado, unless otherwise agreed in writing by the parties. The rules for mediation or arbitration and the selection of the arbitrator shall be determined by mutual agreement of the parties. The mediator or arbitrator shall allocate cost, except that there shall be no pre-decisional interest costs, and each party shall bear its discretionary costs.
2. In the event ADR fails or is not used, primary jurisdiction for the resolution of any claim arising under this Subcontract shall reside in the United States Federal District Court with venue in the United States District Court for the District of Colorado in Denver, Colorado. If the requirements for jurisdiction in the United States District Court are not met, the litigation shall be brought in a Court of competent jurisdiction in Jefferson County, Colorado. This Subcontract shall be enforced and interpreted, irrespective of the place of performance, in accordance with the Federal law of government contracts. To the extent that Federal law is not dispositive of an issue, the laws of the State of Colorado shall be applied.

Unless otherwise directed in writing by the Contractor, Subcontractor shall proceed diligently with the performance of the Subcontract pending final resolution of the dispute.

GP.22 OTHER COMPLIANCES

Subcontractor shall comply with all applicable Federal, state, and local laws, executive orders, rules, statutes, license and permit conditions or requirements, and regulations (hereinafter "laws") applicable to its performance under this Subcontract, including but not limited to all laws pertaining to the environment and/or natural resources, all laws pertaining to employment, and all laws pertaining to health and safety.

Subcontractor shall be liable for all fees, charges, fines or penalties assessed against Subcontractor or Contractor in connection with Subcontractor's compliance or failure to comply with applicable laws.

GP.23 HAZARDOUS MATERIALS REQUIREMENTS

Hazardous Materials are defined as any chemical or material meeting the definition of Hazardous Materials (including radioactive materials) found at 49 CFR Section 171.8. As used herein, Hazardous Chemicals are any chemicals subject to Material Safety Data Sheet (MSDS) requirements in 29 CFR Section 1910.1200. Only Hazardous Chemicals required for the accomplishment of the Statement of Work may be brought on Site. They may be brought onto the Site only when the Subcontractor has submitted applicable MSDSs to the CTR and obtained written approval from the CTR to bring such Hazardous Chemicals on Site.

Hazardous Chemicals may only be stored in an approved chemical storage location. Upon completion of work, the Subcontractor shall notify the CTR in writing of quantities of Hazardous Chemicals used and any unused Hazardous Chemicals

remaining on Site. All Hazardous Chemicals must be accounted for as empty, waste, or product that may be reused. Subcontractor's recommended disposition instructions for any unused Hazardous Chemicals shall be provided in writing to the CTR prior to disposition.

Hazardous Materials, wastes, or substances generated during the performance of work shall not be removed except as specifically authorized in writing by the CTR.

GP.24 LITIGATION SUPPORT

Subcontractor shall provide litigation support to the Government or the Contractor when requested by the Contractor in cases of actual or threatened litigation, regulatory matters, or third-party claims and subject to applicable rules and regulations. Litigation support includes, but is not limited to case preparation assistance, document retrieval, review and reproduction, witness preparation and testimony, expert witness testimony, and assisting Government or Contractor Counsel as necessary in response to discovery or other information-related activities responsive to any legal proceeding. Subcontractor shall include the requirements of this Litigation Support clause in all lower-tier subcontracts.

GP.25 NON-WAIVER

Failure by Contractor in any instance to insist upon observance or performance by Subcontractor of all terms, conditions and requirements of this Subcontract shall not be deemed a waiver by Contractor. No waiver shall be binding upon Contractor unless in writing, signed by Contractor, and shall then be for the particular instance only. Payment of any sum by Contractor to Subcontractor, with or without the knowledge of any breach, shall not be deemed to be a waiver of any requirement of this Subcontract, nor shall such payment constitute an acceptance of work not in compliance with this Subcontract nor relieve Subcontractor of its obligations hereunder.

GP.26 RIGHT TO RELY

Contractor shall be entitled to rely without independent verification on the accuracy, currency, and completeness of information supplied by Subcontractor or its approved lower-tier subcontractors.

GP.27 REPRESENTATIONS AND CERTIFICATIONS

The Representations and Certifications completed as part of the solicitation and offer leading to award of this Subcontract, and all updates thereto, are hereby incorporated into this Subcontract by reference.

GP.28 ORDER OF PRECEDENCE

Any inconsistency in the terms and conditions of this Subcontract shall be resolved by giving precedence in the following order:

1. Special Provisions, including attachments incorporated therein;
2. General Provisions;
3. Subcontract Signature Page; and
4. Statement of Work/Specification.

GP.29 ENTIRETY OF AGREEMENT

This Subcontract consists of the following: Subcontract Signature Page (including Exhibits), General Provisions, Special Provisions (including Attachments), and Specification/Statement of Work including all Attachments, which are incorporated in full text or incorporated by reference as stated in the Subcontract. This constitutes the entirety of this Subcontract and no other prior or contemporaneous statements shall be deemed to be a part of this Subcontract unless specifically incorporated into the Subcontract through a written modification hereof.

GP.30 FAR AND DEAR FLOWDOWN REQUIREMENTS INCORPORATED BY REFERENCE

The Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses incorporated herein shall have the same force and effect as if printed in full text. Wherever necessary to make the context of the clauses set forth below applicable to this Subcontract, the term "Contractor" shall mean Subcontractor, the terms "subcontractor" shall mean lower-tier subcontractor, the term "Contract" shall mean this Subcontract, the term "subcontract" shall mean lower-tier subcontract, and where noted or necessary to derive proper meaning, the terms "Government", "Contracting Officer", and equivalent phrases shall mean Contractor's representative, except the terms Government and Contracting Officer do not change as set forth below:

1. in the phrases "Government Property", "Government Furnished Property", and "Government Owned Property;"
2. in the patent clauses incorporated herein;
3. when a right, act, authorization, or obligation can be granted or performed only by the Government's duly authorized representative;

4. when title to property is to be transferred directly to the Government;
5. when access to proprietary financial information or other proprietary data is required except for authorized audit rights; and
6. where specifically modified herein.

Full-text of the referenced clauses may be found at <http://www.arnet.gov/far/> for FAR clauses and <http://professionals.pr.doe.gov> for DEAR clauses.

Subcontractor agrees to incorporate the requirements of this clause and the clauses listed herein into all lower-tier subcontracts or purchase orders.

Clauses Applying to All Orders/Subcontracts

FAR Clauses

- | | |
|-----------|--|
| 52.225-11 | Restrictions on Certain Foreign Purchases (Aug 1998) |
| 52.227-16 | Additional Data Requirements (Jun 1987) |
| 52.244-6 | Subcontracts for Commercial Items and Commercial Components (Oct 1998) |

DEAR Clauses

- | | |
|------------|--|
| 952.204-2 | Security (Sep 1997) |
| 952.204-71 | Sensitive Foreign Nations Controls (Apr 1984) |
| 952.250-70 | Nuclear Hazards Indemnity Agreement (Jun 1996) |
| 970-5227-1 | Rights in Data Facilities (Dec 2000) |

Clauses Applying to Orders/Subcontracts over \$10,000

FAR Clauses

- | | |
|-----------|---|
| 52.222-21 | Prohibition of Segregated Facilities (Feb 1999) |
| 52.222-26 | Equal Opportunity (Feb 1999) |
| 52.222-35 | Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (Jan 1999) |
| 52.222-36 | Affirmative Action for Workers with Disabilities (Jun 1998) |
| 52.222-37 | Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (Jan 1999) |

Clauses Applying to Orders/Subcontracts over \$100,000

FAR Clauses

- | | |
|-----------|---|
| 52.203-6 | Restriction on Subcontractor Sales to the Government (Jul 1995) |
| 52.203-7 | Anti-Kickback Procedures (Jul 1995) |
| 52.203-12 | Limitation on Payments to Influence Certain Federal Transactions (Jan 1997) |
| 52.215-2 | Audit and Records – Negotiation (Jun 1999) |
| 52.219-8 | Utilization of Small Business Concerns (Oct 1999) |
| 52.222-4 | Contract Work Hours and Safety Standards Act—Overtime Compensation (Jul 1995) |
| 52.223-2 | Clean Air and Water (Apr 1984) |
| 52.223-3 | Hazardous Material Identification and Material Safety Data (Alt 1) (Jan 1997, Jul 1995) |
| 53.223-14 | Toxic Chemical Release Reporting (Oct 1996) |
| 52.227-1 | Authorization and Consent (Jul 1995) |
| 52.227-2 | Notice and Assistance Regarding Patent and Copyright Infringement (Aug 1996) |
| 52.242-13 | Bankruptcy (Jul 1995) |

Clauses Applying to Orders/Subcontracts over \$500,000

FAR Clauses

- | | |
|-----------|---|
| 52.215-11 | Price Reduction for Defective Cost or Pricing Data – Modifications (Oct 1997) (Dollar limitation shall apply to both increases and decreases) |
| 52.215-13 | Subcontractor Cost or Pricing Data – Modifications (Oct 1997) (Dollar limitation shall apply to both increases and decreases) |
| 52.215-15 | Pension Adjustments and Asset Reversions (Dec 1998) (Applicable if cost or pricing data is required) |

- 52.215-18 Reversion of Adjustment of Plans for Post Retirement Benefits (PRB) Other Than Pensions (Oct 1997)
- 52.215-19 Notification of Ownership Changes (Oct 1997)
- 52.219-9 Small Business Subcontracting Plan Alternate II (Oct 1999, Jan 1999)

DEAR Clauses

- 952.226-74 Displaced Employee Hiring Preference (Jun 1997)
- 970.5226-2 Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Dec 2000)

**SPECIAL PROVISIONS (SPs) FOR COST REIMBURSEMENT SUBCONTRACTS
FOR CONSTRUCTION OR DEMOLITION**

TABLE OF CONTENTS

The following clauses that are preceded by a blank space are applicable only if an "X" appears in the blank to the left of the special provision number:

<u>Section</u>	<u>Clause</u>
SP.1	Requirements of Subcontractor's Employees
SP.2	Work to be Performed and Place of Performance
SP.3	Site Investigation and Conditions Affecting the Work
SP.4	Project Labor Agreement
SP.5	Workplace Substance Abuse Program
SP.6	Commencement, Prosecution, and Completion of Work
SP.7	Insurance
SP.8	Invoicing Procedures <i>(Insert the appropriate addresses for accounts payable, CTR, and SA.)</i>
SP.9	Inspection/Acceptance
SP.10	Differing Site Conditions
SP.11	Integration of Environment, Safety, and Health into Work Planning and Execution
SP.12	Lower-tier Subcontractor Pre-qualification
SP.13	Protection of Existing Structures, Equipment, Utilities, and Improvements
SP.14	Operations and Storage Areas
SP.15	Cleaning Up
SP.16	Accident Prevention
SP.17	Other Subcontracts
SP.18	Waiver of Liens
___SP.19	Contractor Work Hours and Holidays <i>(Include if this subject matter is not adequately covered in the Statement of Work.)</i>
___SP.20	Warranty <i>(Include this in Demolition Subcontracts or include a tailored Warranty of Construction Clause if this is a Construction Subcontract.)</i>
___SP.21	Suspect Counterfeit Items <i>(Include if the Subcontract includes the provision of any items to the Site for performance of the work or for incorporation into the work.)</i>
___SP.22	Contractor Purchase of Subcontractor Equipment <i>(May be included as a method of addressing the disposition of Subcontractor equipment that becomes contaminated during performance and cannot be satisfactorily decontaminated.)</i>
___SP.23	Possibility of Contamination of Subcontractor-Owned Materials and Equipment <i>(May be included as another method of addressing the disposition of Subcontractor equipment that becomes contaminated during performance and cannot be satisfactorily decontaminated. If use of this clause is desired, the SA must ensure that the Project will take all of the actions specified in the clause regarding the Subcontractor's equipment.)</i>
___SP.24	Responsibilities for Subcontractor's Materials <i>(Include if the Subcontract contemplates that the Subcontractor will ship materials to the Site for performance of the work or for incorporation into the work.)</i>
___SP.25	Mandatory Flowdown of Certain Statement of Work Requirements <i>(Include this clause if it is intended to have the Statement of Work address Hazardous Material Requirements, Site Access Requirements, Notice of Radioactive Materials) and it is desired to require flowdown of the stated requirements to lower-tier subcontractors.)</i>
___SP.26	Availability of Funds <i>(Include if the Subcontract is not funded at time of award.)</i>

- ___SP.27 Limitation of Funds *(Include if the Subcontract is not fully funded. If this clause is used, include in the Pricing Schedule an allotment schedule showing the dates and amounts when it is contemplated that additional funds will be allotted to the Subcontract.)*
- ___SP.28 Limitation of Cost *(Include if the Subcontract is fully funded, and indicate the Estimated Cost in the Pricing Schedule.)*
- ___SP.29 Options *(Include if the Subcontract includes options to increase quantities or extend the period of performance.)*
- ___SP.30 Special Safety Incentive *(Include this or alternate language that is developed for the particular acquisition if it is desired to incentivize safety performance.)*
- ___SP.31 Schedules for Construction Subcontracts *(Include this clause if the Statement of Work does not already include scheduling language.)*
- ___SP.32 Incentive Fee *(Include if this is a Cost Plus Incentive Fee (CPIF) type Subcontract.)*
- ___SP.33 Fixed Fee *(Include if this is a Cost Plus Fixed Fee type Subcontract.)*
- ___SP.34 Classified Documents and Materials *(Include this clause if the Subcontractor needs to have access to classified information.)*
- ___SP.35 Provision of Certain Personnel *(Include this clause if the Subcontractor might be permitted to lease KH Steelworker labor in the performance of the Subcontract. Also attach a copy of the Steelworker Local 8031 Collective Bargaining Agreement (CBA) to the Subcontract.)*
- ___SP.36 Provision of Certain Personnel Covered by the Project Labor Agreement *(Include this clause if the Subcontractor might be permitted to lease KH Construction Trades labor in the performance of the Subcontract. Also attach a copy of the Project Labor Agreement.)*
- ___SP.37 Radiological Health Requirements *(Include this clause if the Subcontract involves the performance of work in radiological areas on the Site and the content is not covered in the Statement of Work.)*
- ___SP.38 Payment Bond *(Include this clause if this is a construction subcontract. This clause may also be included, if desired, for a demolition subcontract. If a Performance Bond is also deemed necessary, use the Payment and Performance Bond clause from the Special Provisions for Fixed Price or Fixed Unit Rate Construction or Demolition Subcontracts.)*
- ___SP.39 Quality Assurance Requirements *(Include this clause if the Subcontractor's quality assurance system will be evaluated and approved prior to award and the Subcontractor will be placed on the Site Evaluated Subcontractors List.)*
- ___SP.40 Disposal of Waste *(Include this clause if the performance of work will be on the Site and the Statement of Work does not adequately address the content of the clause.)*
- ___SP.41 Materials *(Include this clause if the content is not adequately addressed in the Statement of Work.)*
- ___SP.42 Site Access and Transportation Requirements *(Include this clause if the content is not adequately addressed in the Statement of Work.)*
- ___SP.43 Contractor-Furnished Services and Items (CFS/II) *(Include this clause if the Subcontractor may be provided Contractor-Furnished Services or Items, including leased labor.)*
- ___SP.44 Patent Rights *(Include this clause if this Subcontract is for experimental, developmental, or research work.)*
- ___SP.45 Key Personnel *(Include this clause if Key Personnel have been evaluated and/or control of the replacement of specified key personnel is required.)*
- ___SP.46 Modifications to General Provisions *(Include this clause if any of the General Provisions have been modified or deleted, and show the modifications under this clause.)*
- ___SP.47 Special Provisions Attachments *(Include this clause if any attachments to the Special Provisions have been called out and list the attachments under the clause.)*
- ___SP.48 Special Provisions Incorporated by Reference *(Include this clause if any of the FAR/DEAR clauses listed thereunder are required.)*

SPECIAL PROVISIONS FOR COST REIMBURSEMENTS SUBCONTRACTS FOR CONSTRUCTION OR DEMOLITION

SP.1 REQUIREMENTS FOR SUBCONTRACTOR'S EMPLOYEES

Subcontractor shall furnish competent, trained, and qualified employees experienced in the type of work to be performed. Subcontractor shall, if requested by Contractor, promptly remove at Subcontractor's cost any person considered by Contractor to be incompetent, unsatisfactory, or otherwise undesirable.

SP.2 WORK TO BE PERFORMED AND PLACE OF PERFORMANCE

The Subcontractor shall furnish all personnel (including all proper protective equipment), facilities, equipment, material, supplies, services, and travel (except as may be expressly set forth in this Subcontract as furnished by the Contractor) and otherwise do all things necessary for, or incident to, the performance of the Subcontract. The principal place of performance of this Subcontract shall be the Rocky Flats Environmental Technology Site (RFETS) near Golden, Colorado, and such other RFETS facilities as may be leased or acquired from time to time, or Subcontractor's facilities.

SP.3 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

Subcontractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions that can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather or similar physical conditions at the Site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. Subcontractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site, including all exploratory work done by Contractor, as well as from the drawings and specifications made a part of this Subcontract. Any failure of Subcontractor to take the actions described and acknowledged in this paragraph will not relieve Subcontractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to Contractor.

Contractor assumes no responsibility for any conclusions or interpretations made by Subcontractor based on the information made available by Contractor. Nor does Contractor assume responsibility for any understanding reached or representation made concerning conditions, which can affect the work by any of its employees before the execution of this Subcontract, unless that understanding or representation is expressly stated in this Subcontract.

SP.4 PROJECT LABOR AGREEMENT

All work performed at the Site under this Subcontract must be performed in accordance with the following:

Project Labor Agreement for All Construction Work at RFETS, A Facility of the Department of Energy, between Kaiser-Hill Company, LLC and Colorado Building and Construction Trades Council, effective December 16, 1997.

The foregoing Project Labor Agreement (PLA) is hereby incorporated into and made a part of this Subcontract by reference.

Subcontractor shall pay wage rates and fringe benefits for each applicable classification of laborers and mechanics in accordance with the current PLA and the Davis-Bacon Act. The current Davis-Bacon Wage Classifications are incorporated into and made a part of this Subcontract. Should Subcontractor plan to use a classification of worker that is not subject to the (PLA) and for which Davis-Bacon wage rates are not included, Subcontractor shall contact the CTR to obtain a ruling by Contractor's Project Labor Coordinator on the applicable wage rates for the wage classification in question.

The PLA wage rates shall be appropriately used for all work performed under the Subcontract. For purposes of properly applying the requirements of the PLA under this Subcontract, the words "contractor" and "subcontractor" as used in the PLA shall mean "Subcontractor" and "lower-tier subcontractor" respectively.

The CTR shall designate a Project Labor Coordinator for this Subcontract who will coordinate the administration and enforcement of the PLA under this Subcontract. It is contemplated that from time to time the Coordinator shall implement reasonable rules and regulations pertaining to implementation of the PLA, which will ensure the uniform application of the terms and conditions of the PLA to this Subcontract.

SP.5 WORKPLACE SUBSTANCE ABUSE PROGRAM

Subcontractor shall, within thirty (30) days of award of this Subcontract, submit its written workplace substance abuse program for Contractor review and approval. This program shall, consistent with 10 CFR 707, Workplace Substance Abuse Programs

(incorporated herein by reference with full force and effect), demonstrate how Subcontractor has implemented and maintained a workplace substance abuse program that complies with the requirements of 10 CFR 707, Workplace Substance Abuse Programs.

In addition to any other remedies available to Contractor, Subcontractor's failure to comply with the requirements of 10 CFR 707 or to perform in a manner consistent with its approved program may render Subcontractor subject to (1) the suspension of Subcontract payments or (2) where applicable, termination for default and suspension or debarment.

Subcontractor agrees to include and require the inclusion of the requirements of this clause in all lower-tier subcontracts awarded hereunder.

SP.6 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK

Subcontractor shall be required to (1) begin work under this Subcontract within five (5) days after the date Subcontractor receives the notice to proceed, (2) prosecute the work diligently, and (3) complete the entire work as set forth by the Statement of Work.

Contractor shall not issue the Notice to Proceed until Subcontractor has completed the following requirements:

1. Enrolled in Contractor Controlled Insurance Program (CCIP) or provided the required insurance information (pursuant to Special Provision, Insurance).
2. Submitted Payment and Performance Bonds (pursuant to Special Provision, Payment and Performance Bonds).
3. Received approval of all lower-tier subcontractor's Safety and Health Worksheets (pursuant to Special Provision, Lower-Tier Subcontractor Pre-Qualification).
4. Submitted any other documentation so stipulated in the Statement of Work as required as a precedent to Notice to Proceed.

Subcontractor shall perform and make progress with the work in a prompt and diligent manner, without delay or interference to the completion of the work of Contractor or other entities. Subcontractor agrees to begin the several parts and the whole of work at such times and in such order as Contractor may direct, and in coordination with the work of Contractor and other entities engaged on the project, as directed by Contractor. Subcontractor recognizes that timely and compliant completion of its work within the time allowed is the essence of this Subcontract, and damages could result from late completion.

Contractor shall have the right to rely on Subcontractor providing such orderly and compliant performance; Subcontractor recognizes and acknowledges that Contractor shall be secure in such expectation and reliance. If reasonable grounds for insecurity do arise with respect to Subcontractor's performance, Contractor may, in writing, demand adequate assurance of due performance. The type of assurance required may be specified by Contractor and may include Subcontractor's written commitment to take necessary steps including, but not limited to, posting of bonds or security, acceleration, increase in work force or hours, and replacement and/or supplement of personnel, supervision, and equipment. The Contractor shall be sole determiner of the adequacy of Subcontractor's assurance.

Failure to provide the specified assurance within the time specified shall constitute a repudiation of this Subcontract, whereupon Contractor may terminate the Subcontract without further liability to Subcontractor and without prejudice to any other rights, and such termination shall not affect Subcontractor's obligations with respect to work performed before the effective date of termination.

SP.7 INSURANCE

Contractor has secured and shall maintain a Contractor Controlled Insurance Program (CCIP), insuring Contractor and all eligible and enrolled Subcontractors and lower-tier subcontractors (subcontractors) with the following types of insurance:

1. Workers' Compensation (Statutory)
2. Employer's Liability
3. Commercial General Liability
4. Excess Liability
5. Professional/Pollution Liability.

The specific limits, self-insured retention, and description of the coverages for the above insurance are contained in the CCIP Manual, which is hereby incorporated into the Subcontract by reference. In addition to the insurance coverages Contractor provides under the CCIP, Subcontractor shall maintain the insurance coverages as specified in the CCIP Manual. The purchase of insurance in excess of the policy terms and limits set forth in the CCIP Manual shall be subject to Contractor's written approval.

The costs of the self-insured retention are not allowable when the occurrence, which requires the payment of the self-insured retention, was caused by either:

1. The willful misconduct or lack of good faith of Subcontractor's managerial personnel, or
2. The failure to exercise prudent business judgment by Subcontractor's managerial personnel. The exercise of prudent business judgment relates to the decisions or actions of Subcontractor's managerial personnel in their capacity as management officials responsible for business judgments exercised in the performance of work under this Subcontract.

The term "Subcontractor's managerial personnel", as used above, means the President, the direct reports to the President, and their direct reports, constituting the top three levels of management.

In the event there is an occurrence involving more than one Subcontractor that could result in the payment of an insurance self-insured retention under the CCIP, Contractor shall notify each involved Subcontractor of the joint responsibility for payment of the self-insured retention. The involved Subcontractors shall have ten (10) days to agree among themselves to a proper share of the self-insured retention to be paid by each Subcontractor and so notify Contractor by joint letter. If the involved Subcontractors cannot agree on the share of the self-insured retention to be paid by each Subcontractor, then Contractor shall make such determination, which shall not be a dispute under the "Disputes" clause of this Subcontract.

Subcontractors not eligible for enrollment under the CCIP shall provide and maintain, with forms and insurers acceptable to Contractor until all of its obligations under this Subcontract are satisfied, the following insurance coverages:

1. Workers' Compensation Insurance to cover obligations imposed by Federal and state statutes having jurisdiction over Subcontractor's employees and Employer's Liability Insurance with a limit of not less than \$1,000,000 each accident.
2. Comprehensive Automobile Liability Insurance covering all owned, non-owned, hired, and leased vehicles used in performance of the services or work, both on- and off-Site. Such insurance shall provide a combined single limit of not less than \$1,000,000 for bodily injury and property damage, each occurrence (except, in the case of transportation of Hazardous Materials including Hazardous Waste, the combined single limit shall be \$5,000,000 each occurrence).
3. Commercial General Liability Insurance with a combined single limit of \$1,000,000 per occurrence. Such insurance shall include coverage for bodily injury, property damage, premises, blanket contractual liability, products, and completed operations, independent contractors, broad-form property damage, personal injury, and the hazards commonly referred to as "XCU."

Subcontractor may apply for exceptions or modifications to the insurance coverages stated above. Such request shall be in writing to the Subcontract Administrator and contain documentation that such coverages or limits are not readily obtainable including, if appropriate, documentary evidence that compliance is cost prohibitive.

Except for the Worker's Compensation Policy, Subcontractor shall require all lower-tier subcontractors to endorse the policies required above to name Contractor and Subcontractor and their respective directors, officers, employees, and agents as additional insureds. Such insurance shall provide a waiver of subrogation by Subcontractor and its insurer in favor of all CCIP enrollees and their respective directors, officers, employees, and agents.

Before beginning any work under this Subcontract, Subcontractor shall deliver the Certificates of Insurance to Contractor evidencing the coverages, limits, and endorsements specified above. These certifications shall provide 30 days advance written notice to Contractor of cancellation or non-renewal.

Subcontractor may procure, at its own cost, insurance to compensate Subcontractor for any unallowable or non-reimbursable costs not covered by the above requirements for losses incurred in connection with this Subcontract.

SP.8 INVOICING PROCEDURES

Unless otherwise agreed to in writing by the parties, the Contractor will make payments to the Subcontractor once per month after receipt of an acceptable invoice, in amounts determined to be allowable by Contractor in accordance with the provisions of this Subcontract and Part 31 of the FAR, as supplemented or modified by Subpart 931 of the DEAR in effect on the date of this Subcontract, for services performed by Subcontractor and accepted by the Contractor. Subcontractor shall submit an original invoice and two copies to the following:

Send Original to: Accounts Payable
Rocky Flats Environmental Technology Site (RFETS)
10808 Highway 93, Unit B, MV-2
Golden, CO 80403-8200

Attn: _____ *[Insert appropriate Accounting Name]*

Accounting Phone _____ *[Insert Accounting Phone]*

Accounting Fax _____ *[Insert Accounting Fax]*

Send one (1) copy to: CTR
Rocky Flats Environmental Technology Site (RFETS)
10808 Highway 93, Unit B, *[Insert appropriate facility or MV-2, if appropriate.]*
Golden, CO 80403-8200

Attn: _____ *[Insert appropriate CTR Name.]*

CTR Phone _____ *[Insert CTR phone number.]*

CTR Fax _____ *[Insert CTR fax number.]*

Send one (1) copy to: Subcontract Administrator
Rocky Flats Environmental Technology Site (RFETS)
10808 Highway 93, Unit B, *[Insert appropriate facility or MV-2, if appropriate.]*
Golden, CO 80403-8200

Attn: _____ *[Insert Subcontract Administrator name.]*

SA Phone _____ *[Insert SA phone number.]*

SA Fax _____ *[Insert SA fax number.]*

An invoice must include – (1) name and address of Subcontractor; (2) invoice date; (3) Subcontract number and Line Item number of items being invoiced per the Pricing Schedule; (4) terms of any prompt payment discount offered; (5) name and address of official to whom payment is to be sent; and (6) name, title, and phone number of person to be notified in event of defective invoice. Subcontractors are encouraged to assign an identification number to each invoice.

The Subcontractor shall certify each request for payment as follows:

Subcontractor Certification: I certify, to the best of my knowledge and belief that (1) the amounts requested are only for performance in accordance with the specifications, statement of work, terms, and conditions of the Subcontract, (2) payments to lower-tier subcontractors and craft, to include appropriate taxes, covered by this certification, have been made in accordance with the Subcontract, (3) the amounts requested do not include any amounts that the Subcontractor intends to withhold or retain from a lower-tier subcontractor, and (4) the amounts requested do not include any amounts invoiced by any other means.

SP.9 INSPECTION/ACCEPTANCE

All workmanship performed under the Subcontract is subject to Contractor inspection at all times and places where services are being performed. Subcontractor shall furnish promptly, and at no increase in Subcontract price, all reasonable facilities, labor, and materials necessary for safe and convenient inspection by Contractor. Contractor shall perform inspections in a manner that will not unduly delay the work.

If any work or portion thereof is determined to be unsuitable, defective or in violation of any law, rule, or regulation, then Contractor shall have the right to withhold payment and, at its discretion, require re-performance or correction. With respect to nonconforming material or equipment supplied as part of Subcontractor's work, Contractor may also (1) reject and return the items or (2) hold such items for Subcontractor's instructions at Subcontractor's risk and expense. Nonconforming items shall not be replaced without prior written authorization of Contractor. Subcontractor shall bear and pay all expenses related to nonconforming work, including without limitation costs of correction, return, or replacement, and indemnification of any fines or penalties assessed against the Contractor.

SP.10 DIFFERING SITE CONDITIONS

Subcontractor shall immediately upon discovery, and before the conditions are disturbed, provide written notice to the SA of (1) subsurface or latent physical conditions at the site of the work that differ materially from those indicated in this Subcontract or (2) unknown physical conditions at the site, of an unusual nature, that differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Subcontract.

The Contractor will investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Subcontractor's cost of, or the time required for, performing any part of the work under this Subcontract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Subcontract modified in writing accordingly.

No request by the Subcontractor for an equitable adjustment to the Subcontract under this clause shall be allowed unless the Subcontractor has given the written notice required.

No request by the Subcontractor for an equitable adjustment to the Subcontract for differing site conditions shall be allowed if made after final payment under this Subcontract.

SP.11 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION

If this Subcontract calls for the performance of work on the Site near Golden, Colorado, or such other RFETS facilities as may be leased or acquired from time to time, Subcontractor shall perform work safely and in accordance with the terms of DEAR 970.5223-1, Integration of Environment, Safety and Health into Work Planning and Execution (Dec 2000), which is incorporated herein by reference and made part hereof. The Subcontractor may obtain the full text of the referenced clause at <http://www.pr.doe.gov/dear.html>. Wherever necessary to make the context of the clause applicable to this Subcontract, the term "Contractor" shall mean "Subcontractor", the terms "subcontractor" shall mean lower-tier subcontractor, the term "Contract" shall mean this Subcontract, the term "subcontract" shall mean "lower-tier subcontract," and where noted or necessary to derive proper meaning the terms "Government", "Contracting Officer", and equivalent phrases shall mean Contractor.

Unless otherwise specifically required in writing by Contractor, the Safety Management System referred to in Paragraphs (c), (d), and (e) of the clause is the Kaiser-Hill Safety Management System.

SP.12 LOWER-TIER SUBCONTRACTOR PRE-QUALIFICATION

For all on-Site work activities to be performed by lower-tier subcontractor(s), Subcontractor shall submit a completed Safety and Health Worksheet (attached hereto) for each lower-tier subcontractor. *[Attach Safety and Health Worksheet from S&H 001.]* Lower-tier subcontractor Safety and Health Worksheets shall be submitted to CTR no later than ten (10) days prior to lower-tier subcontract award by Subcontractor. The CTR will notify Subcontractor of pre-qualification results within five days after receipt of pre-qualification information. Subcontractor shall only use pre-qualified lower-tier subcontractors for on-Site activities.

SP.13 PROTECTION OF EXISTING STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS

Subcontractor shall preserve and protect all structures and equipment on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this Subcontract. Subcontractor shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by Subcontractor. Subcontractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Subcontract or failure to exercise reasonable care in performing the work. If Subcontractor fails or refuses to repair the damage promptly, Contractor may have the necessary work performed and charge the cost to Subcontractor.

SP.14 OPERATIONS AND STORAGE AREAS

Subcontractor shall confine all operations (including storage of materials) on Site premises to areas authorized or approved by Contractor. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by Subcontractor only with the approval of Contractor and shall be built with labor and materials furnished by Subcontractor without expense to Contractor. The temporary buildings and utilities shall remain the property of Subcontractor and shall be removed by Subcontractor at its expense upon completion of the work. With the written consent of the Contractor, the buildings and utilities may be abandoned and need not be removed.

Subcontractor shall, under regulations prescribed by Contractor, use only established roadways, or use temporary roadways constructed by Subcontractor when and as authorized by Contractor. When materials are transported in executing the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, Subcontractor shall protect them from damage. Subcontractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

SP.15 CLEANING UP

Subcontractor shall at all times keep the work area (including storage areas), orderly, and free from accumulations of waste materials. Before completing the work, Subcontractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of Contractor or the Government. After completing the work, Subcontractor shall leave the work area in a clean, neat, and orderly condition satisfactory to Contractor.

SP.16 ACCIDENT PREVENTION

Subcontractor shall provide and maintain work environments and procedures which will (1) safeguard the public and Contractor personnel, property, materials, supplies, and equipment exposed to Subcontractor operations and activities; (2) avoid interruptions of Contractor operations and delays in project completion dates; and (3) control costs in the performance of this Subcontract.

For these purposes, Subcontractor shall –

1. provide appropriate safety barricades, signs, and signal lights;
2. comply with the standards issued by the Secretary of Labor at 29 CFR 1926 and 29 CFR 1910; and
3. ensure that any additional measures Contractor determines to be reasonably necessary for the purposes are taken.

Whenever Contractor becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Contractor personnel, Contractor shall notify Subcontractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to Subcontractor or Subcontractor's representative at the work Site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, Subcontractor shall immediately take corrective action. If Subcontractor fails or refuses to promptly take corrective action, Contractor may issue an order suspending all or part of the work until satisfactory corrective action has been taken. Subcontractor shall not be entitled to any equitable adjustment of the Subcontract price or extension of the performance schedule on any suspension of work order issued under this clause.

Subcontractor shall insert this clause, including this paragraph, with appropriate changes in the designation of the parties, in lower-tier subcontracts.

SP.17 OTHER SUBCONTRACTS

Contractor may undertake or award other subcontracts for additional work at or near the site of the work to be performed under this Subcontract. Subcontractor shall fully cooperate with other subcontractors and with Contractor employees and shall carefully adapt scheduling and performance of the work under this Subcontract to accommodate the additional work, heeding any direction that may be provided by Contractor. Subcontractor shall not commit or permit any act that will interfere with the performance of work by any other subcontractor or by Contractor employees.

SP.18 WAIVER OF LIENS

Subcontractor covenants that no mechanic's liens or claims shall be filed or maintained against the work performed hereunder, including the adjacent land, for or on account of any work or labor done or materials furnished in connection with this Subcontract. Subcontractor expressly waives all rights to file or maintain any such liens or claims and agrees that waiving this right shall be an independent covenant and shall operate and be effective with respect to work and labor done and materials furnished under any supplemental contract or contract for extra or additional work.

If any mechanic's lien or other claim shall be filed by Subcontractor, its lower-tier subcontractors or suppliers, relating to work furnished under this Subcontract, Subcontractor shall, within ten (10) days after notification thereof, discharge such lien or claim or otherwise make provision satisfactory to Contractor. Contractor may withhold any money due Subcontractor until such lien or liens are discharged or paid.

SP.19 CONTRACTOR WORK HOURS AND HOLIDAYS

The Contractor works an Alternate Work Schedule (AWS). The normal workweek is as follows: Monday through Thursday 7:00 am to 4:30 pm; Friday 7:00 am to 3:30 pm, alternate Fridays off. Badging is open during the normal workweek. However, Shipping/Receiving only accepts deliveries from 7:00 am to 3:15 pm, Monday through Thursday. Unless otherwise authorized by the Contractor, no deliveries shall be made nor work performed on-Site during observed holidays or outside the hours cited herein.

The Contractor observes the following holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; and Christmas Day.

SP.20 WARRANTY

In addition to any other warranties in this Subcontract, Subcontractor warrants, except as provided herein, that work performed under this Subcontract conforms to the Subcontract requirements and is free of any defect, whether patent or latent, in equipment, material, or design furnished, or workmanship performed by Subcontractor or any subcontractor or supplier at any tier. Subcontractor further warrants that the items are free and clear of all liens and encumbrances, and that Subcontractor has secured Contractor's right to own, sell or use such items. Subcontractor shall transfer all manufacturer or vendor warranties associated with the goods supplied to Contractor and/or entity designated by Contractor. For purposes of this Subcontract,

material or equipment supplied shall include any documentation, such as quality control or test records or certificates of compliance, that may be specified or are customarily furnished in the trade.

This warranty shall continue for 1 year from the date of final acceptance of the work. If Contractor takes possession of any part of the work before final acceptance, this warranty shall continue for 1 year from the date Contractor takes possession.

Subcontractor shall remedy at Subcontractor's expense any failure to conform, or any defect, resulting from Subcontractor's breach of warranty. In addition, Subcontractor shall remedy at Subcontractor's expense any damage to Contractor- or Government-owned or controlled real or personal property, when that damage is the result of- (1) Subcontractor's failure to conform to Subcontract requirements or (2) any defect of equipment, material, workmanship, or design furnished. If Subcontractor fails to replace or correct any such work within ten (10) calendar days after receipt of written notice from Contractor or as otherwise specified by Contractor, Contractor may, at its sole option, cause such work to be replaced or corrected and Subcontractor shall be liable for all costs and expenses incurred, notwithstanding such stipulated period for correction by Subcontractor. In the event the nonconforming work poses an immediate and serious threat to the safety of others or to the environment, then Contractor shall cause correction of the nonconformance by the most expedient means available, and Subcontractor shall be liable and responsible for all costs and expenses related thereto.

Subcontractor shall restore any work damaged in fulfilling the terms and conditions of this clause. Subcontractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

Contractor shall notify Subcontractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. In the event Subcontractor's warranty under this clause has expired, Contractor may bring suit at its expense to enforce a lower-tier subcontractor's, manufacturer's, or supplier's warranty.

Unless a defect is caused by the negligence of Subcontractor or subcontractor or supplier at any tier, Subcontractor shall not be liable for the repair of any defects of material or design furnished by Contractor nor for the repair of any damage that results from any defect in Contractor-furnished material or design.

This warranty supercedes any lesser warranty, whether stated or implied, that may be contained in submittals or other documentation delivered to Contractor by Subcontractor, regardless of whether the submittals or other documentation is accepted or otherwise approved by Contractor, unless a lesser warranty is specifically identified and agreed to in writing as part of this Subcontract. This warranty shall not limit Contractor's rights under the Inspection/Acceptance clause of this Subcontract with respect to latent defects, gross mistakes, or fraud.

SP.21 SUSPECT COUNTERFEIT ITEMS

The Subcontractor warrants that all items provided to the Contractor shall be new and unused unless otherwise specified in writing by the Contractor. Subcontractor further warrants that all items used by the Subcontractor during the performance of work at the Rocky Flats Environmental Technology Site, include all genuine, original, and new components, or are otherwise suitable for the intended purpose. Furthermore, the Subcontractor shall indemnify the Contractor, its agents, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts that are not genuine, original, and unused, or not otherwise suitable for the intended purpose. This includes, but is not limited to, materials that are defective, suspect, or counterfeit; materials that have been provided under false pretenses; and materials or items that are materially damaged, deteriorated, degraded, or result in product failure.

Types of material, parts, and components known to have been misrepresented include (but are not limited to) fasteners; hoisting, rigging, and lifting equipment; cranes; hoists; valves; pipe and fittings; electrical equipment and devices; plate, bar, shapes, channel members, and other structural items; and welding rod and electrodes. The Subcontractor's warranty also extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to the Contractor. In addition, because falsification of information or documentation may constitute criminal conduct, the Contractor may reject and retain such information or items, at no cost, and identify, segregate, and report such information or activities to cognizant Department of Energy officials.

SP.22 CONTRACTOR PURCHASE OF SUBCONTRACTOR EQUIPMENT

In the event of contamination of Subcontractor equipment (if equipment is properly used by Subcontractor and such equipment cannot be appropriately decontaminated), or damage to Subcontractor equipment (attributed solely to the actions of the Contractor), Contractor shall purchase such Subcontractor equipment at the then existing fair market value. Fair market value will be determined by either (1) the book value of the equipment on Subcontractor's accounting records or (2) through a market survey that establishes a market price for the equipment, whichever is less. Items with a fair market value of less than \$1,000 per item shall be considered expendable and therefore not subject to the purchase provisions of this clause.

SP.23 POSSIBILITY OF CONTAMINATION OF SUBCONTRACTOR-OWNED MATERIALS AND EQUIPMENT

Subcontractor's equipment may become contaminated during the course of the work. All Subcontractor equipment must be fully decontaminated prior to removal from the work area. Subcontractor shall submit decontamination and contaminated material control procedures as part of the Environmental, Safety, and Health Plan for Contractor's review and acceptance. Subcontractor shall obtain Contractor's authorization to remove any equipment from the Site.

Contractor will survey Subcontractor's equipment upon arrival at the Site to establish a radiation contamination profile as a baseline. The equipment shall meet Contractor's health physics standards for radioactivity before it will be permitted to enter the work area. Any radioactive materials that are present must be in the form of surface contamination and shall not exceed the levels prescribed by the Site.

Subcontractor shall inform Contractor of specific contaminants that could be left over from previous work so that Contractor can define the tolerable levels for the non-Contractor radioactive contaminants. Any preliminary decontamination that may be required to remove non-Contractor radioactive contaminants will be at Subcontractor's expense. Subcontractor will solely be responsible for the disposal of all wastes generated as a result of preliminary decontamination to remove non-Contractor radioactive contaminants. Neither the Contractor nor the Government shall be designated as a generator of such waste.

The equipment shall also be free on non-radioactive hazardous contaminants upon arrival at the Site. Verification shall be supplied by Subcontractor that the equipment does not contain hazardous contaminants upon arrival, including residual hazardous contaminants that might be hidden inside equipment. In the event that the equipment is found to be contaminated with non-Contractor non-radioactive hazardous contaminants upon arrival, Subcontractor will not be permitted to begin work until the equipment is free of significant (non-trace) non-Contractor contamination, as defined by Contractor. Any preliminary decontamination to remove non-Contractor hazardous contaminants that may be required will be at Subcontractor's expense. Subcontractor will solely be responsible for the disposal of all wastes generated as a result of preliminary decontamination to remove non-Contractor non-radioactive hazardous contaminants. Neither the Contractor nor the Government shall be designated as the generator of non-Contractor non-radioactive or hazardous waste.

Upon completion of the work, Contractor will survey and inspect Subcontractor's equipment before it is removed from the work area to establish a post-processing radiation contamination profile. If the equipment decontamination profile exceeds Site restrictions, Subcontractor shall carry out the necessary radioactive decontamination at the work site according to Subcontractor's procedures.

Subcontractor shall take all reasonable measures to mitigate the potential for contamination of its equipment during performance of the work. If the Contractor determines that required exit decontamination limits, as set forth in the Subcontract documents, of any piece of equipment is unattainable, despite Subcontractor's best efforts, Subcontractor will be compensated for the appraised value of the equipment considering age, condition, and value of similar equipment, unless contamination of said equipment is deemed by Contractor to be the result of carelessness or negligence on the part of the Subcontractor. If a value cannot be agreed on, an independent appraiser may be used to determine value.

Subcontractor shall identify, in advance of use, all items of equipment to be used in performance of that work that, because of the nature or configuration of the equipment, may be reasonably expected not to be capable of being decontaminated through reasonable efforts. Subcontractor shall be responsible for the cost of all such equipment, and will not receive compensation for this equipment pursuant to the paragraph above.

SP.24 RESPONSIBILITIES FOR SUBCONTRACTOR'S MATERIALS

Subcontractor shall be responsible for all receiving, unloading, inspecting, and storing its materials delivered to the Site and work performed until completion and acceptance of the entire work, except for any completed unit of work that may have been accepted under the Subcontract. Subcontractor shall, at its expense, be solely responsible for protecting and maintaining security of its equipment, materials, property and employees at all times. Neither Contractor nor the Government shall assume responsibility or liability for any security measures taken by Subcontractor.

SP.25 MANDATORY FLOWDOWN OF CERTAIN STATEMENT OF WORK REQUIREMENTS

Subcontractor shall include the following Statement of Work requirements in any lower-tier subcontracts:

1. Hazardous Material Requirements
2. Site Access and Transportation Requirements
3. Notice of Radioactive Materials.

SP.26 AVAILABILITY OF FUNDS

Funds are not presently available for this Subcontract. The Contractor's obligation under this Subcontract is contingent upon the availability of funds from which payment for subcontract purposes can be made. No legal liability on the part of the Contractor for

any payment may arise until funds are made available to the Contractor for the Subcontract and until the Subcontractor receives notice of such availability, to be confirmed in writing by the Contractor.

SP.27 LIMITATION OF FUNDS

This Subcontract is incrementally funded. The Pricing Schedule specifies the amount presently available for payment by the Contractor and allotted to this Subcontract, the items covered, and an allotment schedule that sets forth the dates and amounts it is expected that Contractor will allot additional funds to the Subcontract. ***[Allotment schedule must set forth the work that is incrementally funded, as identified by line items, the total Not-to-Exceed amount of the funded portion of the Subcontract for that work, and the dates and amounts when it is expected that addition funds will be allotted to the Subcontract for that work.]***

The parties contemplate that the Contractor will allot additional funds incrementally to the Subcontract up to the full price specified in the Pricing Schedule. For the incrementally funded portion of the Subcontract, the Subcontractor agrees to perform, or have performed, work on the Subcontract up to the point at which the total amount paid and payable by the Contractor under the Subcontract, including reimbursement in the event of termination of the Subcontract for the Contractor's convenience, approximates but does not exceed the total amount actually allotted by the Contractor to the Subcontract. The Subcontractor will not be obligated to continue work on the Subcontract for the incrementally funded work beyond that point, and the Contractor will not be obligated in any event to reimburse the Subcontractor in excess of the amount allotted to the Subcontract for that work regardless of anything to the contrary in the clause entitled Termination in the General Provisions of this Subcontract. As used in this clause, the total amount payable by the Contractor in the event of termination for convenience includes costs, profit on work performed, and estimated termination settlement costs for the terminated work.

For the incrementally funded work, the Subcontractor shall notify the Contractor in writing whenever it has reason to believe that the costs it expects to incur under this Subcontract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the total amount so far allotted to the Subcontract by the Contractor for that work. The notice shall state the estimated amount of additional funds required to continue performance of that work up to the next scheduled date for allotment of funds specified in the Pricing Schedule, or to a mutually agreed upon substitute date. The notice shall also advise Contractor of the estimated additional funds that will be required for the timely performance of the incrementally funded portion of the Subcontract for a subsequent period as may be specified in the allotment schedule or as otherwise agreed to by the parties.

If, after notification, additional funds are not allotted by the date identified in the Subcontractor's notification, or by an agreed-on substitute date, upon the Subcontractor's written request, the Contractor will terminate the incrementally funded portion of the Subcontract for convenience on that date in accordance with the provisions of the Termination clause of the General Provisions of this Subcontract. If the Subcontractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Contractor may terminate this Subcontract on that later date.

Except as required by other provisions of this Subcontract, specifically citing and stated to be an exception to this clause—

1. The Contractor is not obligated to reimburse the Subcontractor for costs incurred in excess of the total amount allotted by the Contractor to this Subcontract; and
2. The Subcontractor is not obligated to continue performance under this Subcontract (including actions under the Termination clause of this Subcontract) or otherwise incur costs in excess of the amount then allotted to the Subcontract by the Contractor until the Contractor notifies the Subcontractor in writing that the amount allotted by the Contractor has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Contractor to this Subcontract.

No notice, communication, or representation in any form other than that specified in the second paragraph of this clause, or from any person other than the Contractor, shall affect the amount allotted by the Contractor to this Subcontract. In the absence of the specified notice, the Contractor is not obligated to reimburse the Subcontractor for any costs in excess of the total amount allotted by the Contractor to this Subcontract, whether incurred during the course of the Subcontract or as a result of termination.

Any costs the Subcontractor incurs before the increase that are in excess of the amount previously allotted by the Contractor shall be allowable to the same extent as if incurred afterward—to the extent that the amount allotted by the Contractor to the Subcontract is increased—unless the Contractor issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

Change orders shall not be considered an authorization to exceed the amount allotted by the Contractor specified in the Pricing Schedule, unless they contain a statement increasing the amount allotted.

SP.28 LIMITATION OF COST

The parties estimate that performance of this Subcontract, exclusive of any fee, will not cost the Contractor more than—

1. The estimated cost specified in the Pricing Schedule; or
2. If this is a cost-sharing Subcontract, the Contractor's share of the estimated cost specified in the Pricing Schedule.

The Subcontractor agrees to use its best efforts to perform the work specified in the Pricing Schedule and all obligations under this Subcontract within the estimated cost, which, if this is a cost-sharing Subcontract, includes both the Contractor's and the Subcontractor's share of the cost.

The Subcontractor shall notify the Contractor in writing whenever it has reason to believe that—

1. The costs the Subcontractor expects to incur under this Subcontract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Pricing Schedule; or
2. The total cost for the performance of this Subcontract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

As part of the notification, the Subcontractor shall provide the Contractor a revised estimate of the total cost of performing this Subcontract.

Except as required by other provisions of this Subcontract, specifically citing and stated to be an exception to this clause—

The Contractor is not obligated to reimburse the Subcontractor for costs incurred in excess of the following:

1. The estimated cost specified in the Pricing Schedule or,
2. If this is a cost-sharing Subcontract, the estimated cost to the Contractor specified in the Pricing Schedule.

The Subcontractor is not obligated to continue performance under this Subcontract (including actions under the Termination clause of this Subcontract) or otherwise incur costs in excess of the estimated cost specified in the Pricing Schedule, until the Contractor does the following:

1. Notifies the Subcontractor in writing that the estimated cost has been increased, and
2. Provides a revised estimated total cost of performing this Subcontract.

If this is a cost-sharing Subcontract, the increase shall be allocated in accordance with the formula specified in the Pricing Schedule.

No notice, communication, or representation in any form other than that specified in subparagraph above, or from any person other than the SA, shall affect this Subcontract's estimated cost to the Contractor. In the absence of the specified notice, the Contractor is not obligated to reimburse the Subcontractor for any costs in excess of the estimated cost or, if this is a cost-sharing Subcontract, for any costs in excess of the estimated cost to the Contractor specified in the Pricing Schedule, whether those excess costs were incurred during the course of the Subcontract or as a result of termination.

If the estimated cost specified in the Pricing Schedule is increased, any costs the Subcontractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Contractor issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

Change orders shall not be considered an authorization to exceed the estimated cost to the Contractor specified in the Pricing Schedule, unless they contain a statement increasing the estimated cost.

If this Subcontract is terminated or the estimated cost is not increased, the Contractor and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the Subcontract, based upon the share of costs incurred by each.

SP.29 OPTIONS

Options to extend the term of the Subcontract or increase/decrease quantities, if any, are identified in the Pricing Schedule. If options are included, Contractor may exercise the option by written notice to the Subcontractor provided that said notice to extend the term or increase/decrease quantities is provided to Subcontractor at least ten (10) days before the expiration of the Subcontract.

If the Contractor exercises this option, the extended or changed Subcontract shall be considered to include this option clause.

SP.30 SPECIAL SAFETY INCENTIVE

In recognition of the importance of safe work performance under the Subcontract and in addition to any other incentive program(s) the Subcontractor may have in place, the parties agree that safe work practices under the Subcontract will be incentivized as follows:

1. *[Insert a reasonable percentage-spelled out here; numeral in next blank.]* percent (~~X~~%) of the original Subcontract Estimated Cost (or Target Cost if this is a CPIF Subcontract) but not less than \$25,000 (herein referred to as "total incentive") is available as additional compensation to Subcontractor as set forth by this Special Incentive clause. Conversely, Subcontract price may be adjusted downward as set forth below.
2. Nothing in this clause shall be restrictive of any Contractor rights under other clauses of the Subcontract.
3. The Subcontractor shall reward its personnel having the best safety records in the form of safety awards and incentives as determined by Subcontractor. The Subcontractor shall share at least 50 percent of earnings under this clause with employees assigned to the work at RFETS.
4. Safety Incidents are defined as any safety infraction or deficiency. Examples include, but are not limited to, the following:
 - a. working in unprotected trenches, excavations, or unauthorized entry into confined spaces
 - b. failure to properly use tools, stationary equipment, and heavy equipment
 - c. failure to properly use personal protective equipment (i.e., safety glasses, hard hats, fall protection, etc.)
 - d. failure to follow/comply with Subcontract Project Health and Safety Plan (PHASP) or other health and safety requirements contained within the Subcontract.
 - e. failure to report work-related injuries, illnesses, or accidents.
5. The actual incentive award for Subcontractor safe performance is solely determined by Contractor based on Subcontractor performance compared to safety standards and the requirements applicable to the Subcontract as follows:
 - a. Safety Incidents will incur the reward or penalty points as set forth below.

SUBCONTRACTOR SAFETY INCENTIVE PROGRAM

The following information is provided to explain the system that will be used with regard to Subcontractor Safety Incentive citations and penalties. Described are the violation classifications and the associated minimum to maximum number of points that the Contractor can assign should one of these violation classifications occur. The Contractor is the final authority with respect to the points that may be assigned for each violation classification, with consideration of the Subcontractor's responsiveness and good faith in abating violations in the Contractor's sole discretion.

Classifications

Violation Type	Pt. Scale (Min. Max.)
Subcontractor Self-Identified Safety Violation – A violation identified, abated, and properly documented by the Subcontractor.	0
<i>Contractor Identified Safety Violations</i>	
Good Safety Practice Observation – A positive act or condition performed by the Subcontractor that is observed by the Contractor and is above and beyond minimum safety and health requirements and/or expectations.	+1 to +5 (Credit)
<i>De Minimis</i> Violation - A violation of a standard that has no direct or immediate relationship to safety or health.	0
Other Than Serious Violation - A violation that has a direct relationship to job safety and health but probably would not cause death or serious physical harm.	-1 to -5
Serious Violation - A violation where there is substantial probability that death or serious physical harm could result and that the employer knew, or should have known, of the hazard.	-5 to -30
Failure to Abate Prior Violation - Failure to abate a prior violation (all classifications) that was cited by either the Contractor or Subcontractor.	-5 to -30
Repeated/Systemic Violation - A violation of any standard, regulation, rule, or order where, upon re-inspection, a substantially similar violation occurs.	-10 to -30
OSHA Recordable Case - Those cases as defined in 29 CFR 1904.	-20
OSHA Day-Away-From-Work Case - OSHA recordable cases that involve days away from work.	-30
Willful Violation – A violation that the employer knowingly commits or commits with plain indifference to the law. The employer either knows that what he or she is doing constitutes a violation, or is aware that a hazardous condition existed and made no reasonable effort to eliminate it.	-116
Work Related Fatality - Any occupational injury or illness that results in death.	-116

Safety Incentive Scale

The following scale depicts a stepped safety incentive based upon percentage. This percentage is determined by the number of points the Subcontractor incurs during the period of performance. Depending on the percentage, the Subcontractor may be eligible to receive the dollar amount shown or be obligated to pay.

Dollar Amount Available	Percent of Safety Incentive	Points Allowed to Receive Safety Incentive	
		Minimum	Maximum
Dollars as specified by Subcontract	100	+0	-25
	80	-26	-35
	60	-36	-45
	40	-46	-55
	20	-56	-65
	0	-66	-75
	-20	-76	-85
	-40	-86	-95
	-60	-96	-105
	-80	-106	-115
	-100	≥-116	-

- b. Determination and distribution of the actual incentive will occur as part of final payment in accordance with the following process and conditions:
 - i. The Subcontractor shall submit with its final invoice a Safety Incentive Notification and, if applicable, a request for incentive fee payment. The Safety Incentive Notification shall provide the Subcontractor's evaluation of its performance in accordance with this clause, and include Subcontractor's calculation, based on the evaluation, of the amount of incentive fee due the Subcontractor or the amount of total compensation to be withheld by the Contractor.
 - ii. If Subcontractor fails to submit a timely Safety Incentive Notification, the Contractor shall unilaterally determine the amount due or to be withheld.
 - iii. The final safety incentive amount to be paid to or withheld from the Subcontractor under this clause is determined solely by the Contractor and is not subject to the Disputes clause.
- c. Any Safety Incident identified by Contractor will be promptly communicated to the Subcontractor. Such notification will be submitted in writing, by the CTR to the Subcontractor's Project Manager.

SP.31 SCHEDULES FOR CONSTRUCTION SUBCONTRACTS

The Subcontractor shall, within five (5) days after written request from Contractor, prepare and submit to the Contractor for approval three (3) copies of a practicable schedule showing the order in which the Subcontractor proposes to perform the work, and the dates on which the Subcontractor contemplates starting and completing the several key elements of the work (including acquiring materials, plant, and equipment, to include Contractor-furnished services and items). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Subcontractor fails to submit a schedule within the time prescribed, the Contractor may not issue the Notice to Proceed, or withhold payments due the Subcontractor until the Subcontractor submits the required schedule.

The Subcontractor shall enter the actual progress determined by the Contractor on the chart (including Contractor-furnished services and items usage), and upon doing so shall immediately deliver three (3) copies of the annotated schedule to the Contractor. If, in the opinion of the Contractor, the Subcontractor falls behind the approved schedule, the Subcontractor shall take steps necessary to improve its progress, including those that may be required by the Contractor, without additional cost to the Contractor. In this circumstance, the Contractor may require the Subcontractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contractor deems necessary to demonstrate how the approved rate of progress will be regained.

Failure of the Subcontractor to comply with the requirements of the Contractor under this clause shall be grounds for a determination by the Contractor that the Subcontractor is not executing the work with sufficient diligence to ensure completion within the time specified in the Subcontract. Upon making this determination, the Contractor may terminate the Subcontractor's right to proceed with the work, or any separable part of it, in accordance with the General Provision, Suspension of Work or Termination for Default, of this Subcontract.

SP.32 INCENTIVE FEE

General

The Contractor shall pay the Subcontractor for performing this Subcontract a fee determined as provided in this Subcontract.

Target Cost and Target Fee

The target cost and target fee specified in the Pricing Schedule are subject to adjustment if the Subcontract is modified as described below.

"Target cost," as used in this Subcontract, means the estimated cost of this Subcontract as initially negotiated, adjusted in accordance with the provisions described below. "Target fee," as used in this Subcontract, means the fee initially negotiated on the assumption that this Subcontract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with the guidance below.

Withholding of Payment

Normally, the Contractor shall pay the fee to the Subcontractor as specified in the Pricing Schedule. However, when the Contractor considers that performance or cost indicates that the Subcontractor will not achieve target, the Contractor shall pay on the basis of an appropriate lesser fee. When the Subcontractor demonstrates that performance or cost clearly indicates that the Subcontractor will earn a fee significantly above the target fee, the Contractor may, at its sole discretion, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the Contractor may withhold further payment of fee until a reserve is set aside in an amount that the Contractor considers necessary to protect the Contractor's interest. This reserve shall not exceed 15 percent of the applicable fee or \$100,000, whichever is less. The Contractor shall release 75 percent of all fee withholds under this Subcontract after receipt of the certified final indirect cost rate proposal covering the year

of physical completion of this Subcontract, provided the Subcontractor has satisfied all other Subcontract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contractor may release up to 90 percent of the fee withholds under this Subcontract based on the Subcontractor's past performance related to the submission and settlement of final indirect cost rate proposals.

Equitable Adjustments

When the work under this Subcontract is increased or decreased by a modification to this Subcontract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to this Subcontract.

Fee Payable

1. The fee payable under this Subcontract shall be the target fee increased by _____ *[Insert Subcontractor's participation]* cents for every dollar that the total allowable cost is less than the target cost or decreased by _____ *[Insert Subcontractor's participation]* cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than _____ *[SA insert percentage]* percent or less than _____ *[Insert percentage]* percent of the target cost.
2. The fee shall be subject to adjustment, to the extent provided below, and within the minimum and maximum fee limitations in Paragraph 1 above, when the total allowable cost is increased or decreased as a consequence of—
 - a. Payments made under assignments; or
 - b. Claims excepted from the release as required by the Allowable Cost and Payment clause.
3. If this Subcontract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of this Subcontract.
4. For the purpose of fee adjustment, "total allowable cost" shall not include allowable costs arising out of—
 - a. Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Subcontractor or any subcontractor;
 - b. The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Subcontractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;
 - c. Any direct cost attributed to the Subcontractor's involvement in litigation as required by the Contractor pursuant to a clause of this Subcontract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;
 - d. The purchase and maintenance of additional insurance not in the target cost and required by the Contractor, or claims for reimbursement for liabilities to third persons pursuant to the Insurance clause;
 - e. Any claim, loss, or damage resulting from a risk for which the Subcontractor has been relieved of liability by the Government Property clause; or
 - f. Any claim, loss, or damage resulting from a risk defined in the Subcontract as unusually hazardous or as a nuclear risk and against which the Government has expressly agreed to indemnify the Subcontractor.

All other allowable costs are included in "total allowable cost" for fee adjustment in accordance with this paragraph, unless otherwise specifically provided in this Subcontract.

Contract Modification

The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to this Subcontract signed by the Contractor and Subcontractor.

Inconsistencies

In the event of any language inconsistencies between this clause and provisioning documents or Contractor options under this Subcontract, compensation for spare parts or other supplies and services ordered under such documents shall be determined in accordance with this clause.

SP.33 FIXED FEE

The Contractor shall pay to the Subcontractor for performing this Subcontract the fixed fee specified in the Pricing Schedule.

Payment of the fixed fee shall be made in installments based upon the percentage of completion of the work as determined from estimates submitted to and approved by the Contractor, but subject to the withholding provisions set forth below.

After the payment of 85 percent of the fixed fee, the Contractor may withhold further payment of fee until a reserve is set aside in an amount that the Contractor considers necessary to protect the Contractor's interest. This reserve shall not exceed 15 percent

of the total fixed fee or \$100,000, whichever is less. The Contractor shall release 75 percent of all fee withholds under this Subcontract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this Subcontract, provided the Subcontractor has satisfied all other Subcontract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contractor may release up to 90 percent of the fee withholds under this Subcontract based on the Subcontractor's past performance related to the submission and settlement of final indirect cost rate proposals.

SP.34 CLASSIFIED DOCUMENTS AND MATERIALS

Subcontractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified documents and materials and protecting against sabotage, espionage, and loss or theft of the classified documents and materials in the Subcontractor's possession in connection with the performance of work under this Subcontract. Except as otherwise expressly provided in this Subcontract, the Subcontractor shall, upon completion or termination of this Subcontract, transmit to Contractor a Certificate of Non-Possession of Classified Documents and Materials, which indicates that Subcontractor has returned to authorized representatives of the DOE or disposed of, in accordance with DOE security requirements, all classified documents and materials that were formerly held by Subcontractor under this Subcontract. ***[Attach Certificate of Non-Possession and list it in the clause, Special Provisions Attachments.]*** Subcontractor's failure to provide the required Certificate of Non-Possession of Classified Documents and Materials within thirty (30) days of completion or termination of the Subcontract, may, in addition to any other remedy available under law, result in assessment of \$250.00. The charge shall be deducted from payments otherwise due the Subcontractor.

SP.35 PROVISION OF CERTAIN PERSONNEL

The Contractor and Subcontractor agree that, during the term of this Subcontract, the Subcontractor shall accept assignment from Contractor of certain skilled union workers presently performing work at RFETS who are not otherwise employees of the Subcontractor and who are members of a recognized collective bargaining agreement, including without limitation, union members of the United Steelworkers of America, Local 8031, AFL-CIO-CLC (Assigned Workers), who are working and/or available at the RFETS in accordance with the terms of the Collective Bargaining Agreement (CBA). Assigned Workers shall only be used to perform work within the scope of this Subcontract. Subcontractor recognizes Contractor as signatory employer, responsible for administration and interpretation of the CBA with the United Steelworkers of America Local 8031 and Subcontractor agrees to provide work direction and supervision to Assigned Workers and operate in compliance with the terms of the CBA, attached. ***[Attach the CBA.]***

The Contractor will, in accordance with the terms and conditions hereof, assign Skilled Workers to the Subcontractor in numbers as agreed to by the parties. During the time that any worker is assigned to the Subcontractor, all conditions of that worker's employment will be in accordance with the terms of the CBA and the applicable policies and procedures of the Contractor. These terms shall include, but not be limited to, wages, seniority, job placement, leaves and layoffs, hours of work, overtime provisions, premium pay provisions, vacations, holidays, pensions, health and welfare, group insurance, grievance procedures, arbitration rights, and general provisions. In addition, Contractor and Subcontractor may negotiate in good faith any additional terms and conditions to apply to their employment, provided, however, such additional terms and conditions do not run contrary to the terms and conditions of the CBA.

Unless otherwise specifically provided in a written agreement between the Contractor and the Subcontractor, the Subcontractor shall be responsible to the Contractor for all costs, expenses, and liability associated with this Subcontractor's use of an Assigned Worker, including requirements of the CBA and the acts or omissions of the Subcontractor or any of its servants, agents, subcontractors, or employees, including the Assigned Workers assigned by the Contractor to the Subcontractor. Contractor shall not be responsible for either the quantity nor quality of work performed by Assigned Workers used by Subcontractor.

Subcontractor shall require its Assigned Workers comply with all applicable Federal, state, and local statutes, ordinances, regulations, and rules pertaining to occupational safety and health including rules and practices required by DOE, the Contractor, and Subcontractor. Subcontractor shall provide a suitable place of employment for its Assigned Workers to perform work. Further, Subcontractor shall provide all materials, supplies, facilities, space, and equipment, including protective clothing and equipment, as defined in Article XIV, Section 9 of the CBA, necessary for its Assigned Workers to perform their assigned duties. Subcontractor shall maintain an accident reporting system acceptable to the Contractor and shall immediately forward to Contractor a copy of each accident report involving injuries to or death of any Assigned Worker.

During term of usage, an Assigned Worker shall be treated by Subcontractor as a matrixed employee of the Subcontractor for all purposes and, in every respect; such Assigned Worker's services during the term of the assignment shall be subject to the actual control, direction, and supervision of the Subcontractor. The risk of any loss, damage, or liability arising out of the actions of the Assigned Worker during the term of the assignment shall be with and upon the Subcontractor and not with and upon the

Contractor. The loss of use of an Assigned Worker for any reason (training, vacation, illness, injury, etc.) is not the responsibility of the Contractor.

The Contractor shall be responsible for the payment of all compensation and other benefits to the Assigned Workers and for the required withholding, including applicable taxes, relating to compensation and other benefits paid to the Assigned Worker.

The Subcontractor shall supply to the Contractor, in such form and substance and for such time intervals as the Contractor shall reasonably require, reports detailing the hours worked by each such Assigned Worker, the task numbers or other work/project designations assigned to that Assigned Worker's hours, and any other similar information reasonably requested by the Contractor.

All disputes with any such Assigned Worker (or his or her union) that are governed by the terms of the CBA shall be resolved in accordance with the CBA. The Subcontractor shall cooperate fully (and at its expense) with the Contractor in resolving such disputes to include reinstatement and/or the payment of back pay to the aggrieved Assigned Worker who is returned to his employment or who is found to have been treated in contradiction of the provisions of the CBA. The provisions of this paragraph are without prejudice to Contractor's other rights as established and set forth in the Subcontract.

Subcontractor agrees to communicate to its Contractor designated Labor Relations or Human Resources personnel any situation or occurrence related to Assigned Workers that –

1. may affect the employer-employee relationship;
2. be considered a violation of the CBA;
3. result in disciplinary action;
4. establish a precedent under the CBA; or
5. adversely affect other subcontractors using Assigned Workers, whether resolved or not at the Subcontractor level.

It is understood that Subcontractor will be the primary management participant in resolving problems or grievances at the employer/supervisor level (first step) in accordance with the procedures of the CBA. Subcontractor agrees to participate in grievance resolution with Contractor up to and including arbitration. Subcontractor recognizes Contractor's authority to direct the resolution of grievances, if deemed necessary, from the second step up to and including arbitration, once they have advanced to that level where they have become potentially precedent-setting or may affect other subcontractors or the Site-wide labor relations program. The costs (including the costs of Subcontractor management participation in the process and Subcontractor legal expenses) of arbitration, grievance processing, legal fees, back pay awards, etc. shall be borne by the Subcontractor.

Contractor will maintain centralized files or a database reflecting the classifications, training records, skills, and relative seniority of Assigned Workers. This information will be used to assist in the assignment of Assigned Workers to the Subcontractor. Contractor and Subcontractor will designate a Point-of-Contact for Labor Relations.

Subcontractor recognizes Contractor's right to provide training at the Contractor's cost to its Assigned Workers that is necessary for them to meet Site-wide requirements. Training scheduling will be coordinated with Subcontractor.

Subcontractor recognizes Contractor's right to communicate either orally or in writing to Assigned Workers. Such communication shall be designed so as not to disrupt on-going work and will be made available to Subcontractor prior to issuance.

Contractor warrants that the Assigned Workers provided to Subcontractor shall meet the CBA-established qualifications for their job classification, and be assigned to the Subcontractor on the employee's existing shift. Contractor will provide Assigned Workers with all required notices of termination, or possible termination, as the result of a workforce restructuring in accordance with the provisions of state or Federal law, and Section 3161 of the National Defense Authorization Act for Fiscal Year 1993.

When Subcontractor chooses to reduce the number of Assigned Workers it has in a particular classification, individuals will be reassigned back to Contractor on the basis of their relative seniority among others holding the same classification supervised by Subcontractor, with the least senior being reassigned.

Contractor retains the right to temporarily reassign Assigned Workers from Subcontractor as short-term emergency or critical Site operating conditions dictate. Such reassignments will only be made after consultation with authorized Subcontractor representatives and written direction subsequently provided to Subcontractor. Following such temporary condition, Assigned Workers will be reassigned to Subcontractor. The impact of such temporary reassignments, if any, shall be addressed in accordance with the terms of the Changes clause of the Subcontract.

Absent an express agreement between Subcontractor, Contractor and the applicable union to the contrary, the availability of any specific Assigned Worker is not guaranteed and is subject to various factors, including without limitation, the provisions the CBA, the use of such Assigned Worker by the Contractor, or other subcontractors or others performing work at the Site.

Any expenses or costs chargeable to the Subcontractor under this clause shall be allowable unless made unallowable by other provisions of this Subcontract.

SP.36 PROVISION OF CERTAIN PERSONNEL COVERED BY THE PROJECT LABOR AGREEMENT

The process for a Subcontractor to obtain personnel covered by the Project Labor Agreement (Workers) is for the Subcontractor first to contact the Union Halls directly. If the Union Halls fill the request for Workers, the Subcontractor is subject to the terms and conditions of the Project Labor Agreement (PLA) for All Construction Work at RFETS, including Addendum-1 for All Decommissioning and Demolition (D&D) Construction Work at the Site and Addendum-3 (Project Labor Agreement), attached. *[Insert Project Labor Agreement.]* This includes without limitation, union members of the unions listed in the PLA who are working and/or available at the RFETS in accordance with the terms of the PLA. Workers so assigned shall only perform D&D construction work as contemplated by Addendum-1 and Addendum-3 to the PLA. The Subcontractor shall be a Union Employer signatory to the PLA as necessary to obtain the services of such Workers.

If the Union Halls **cannot** fill the Subcontractor's requirements, the Subcontractor can subcontract to an outside firm. The outside firm is subject to the terms and conditions of the PLA. This includes without limitation, union members of the unions listed in the PLA who are working and/or available at RFETS in accordance with the terms of the PLA. Workers so assigned shall only perform D&D construction work as contemplated by Addendum-1 or Addendum-3 to the PLA. The outside firm shall be a Union Employer signatory to the PLA as necessary to obtain the services of such Workers.

If the Union Halls **cannot** fill the Subcontractor's requirements, the Subcontractor can contact the Contractor for Workers. If the Contractor fills the request for Workers then the Contractor is subject to the terms and conditions of the PLA. This includes without limitation, union members of the Unions listed in the PLA who are working and/or available at RFETS in accordance with the terms of the PLA. Workers so assigned shall only perform D&D construction work as contemplated by Addendum-1 or Addendum-3 to the PLA.

The following provisions define the requirements of both the Subcontractor and Contractor when the Contractor does provide Workers; however, this does not obligate or require the Contractor to provide a specific Worker or type of Workers in support of the Subcontractor:

The Project Labor Agreement is incorporated by reference herein as if set forth in full.

During the time that any Worker is assigned to the Subcontractor, all conditions of that Worker's employment will be in accordance with the terms of the applicable policies and procedures of the Contractor and the PLA. These terms shall include, but not be limited to, wages, seniority, job placement, jurisdictional assignments, grievance procedures, idle time, leaves and layoffs, hours of work, overtime provisions, premium pay procedures, arbitration rights, and general provisions. The Contractor may be consulted concerning applicable policies and procedures. The Subcontractor shall provide 24-hour notice to the Contractor before returning a Worker to the Contractor for any reason. The Subcontractor may make a recommendation; however, the Contractor is responsible for all Worker terminations.

1. Unless otherwise specifically provided in a written agreement between the Contractor and the Subcontractor, the Subcontractor shall be responsible to the Contractor for all costs, expenses, and liability associated with the Subcontractor's use of a Worker, including requirements of the PLA, and the acts or omissions of the Subcontractor or any of its servants, agents, subcontractors, or employees, including other Workers assigned by the Contractor to the Subcontractor. The assignment of Workers as requested by Subcontractor shall not relieve Subcontractor of any responsibility for scope, schedule, budget, or completion of the work as specified in the Subcontract. Contractor shall charge such costs, expenses, and liability associated with Subcontractor's use of a Worker, including salary, fringe, and related costs to the Subcontractor, which shall be offset against the Subcontract price.
2. Subcontractor shall require its Workers to comply with all applicable Federal, state, and local statutes, ordinances, regulations, and rules pertaining to occupational safety and health including rules and practices required by DOE, the Contractor, and Subcontractor. Subcontractor shall provide a suitable place of employment for its Workers to perform work. Further, unless stated otherwise elsewhere in the Subcontract, Subcontractor shall provide all materials, supplies, facilities, space—including lunch room, change room, lockers—and equipment necessary for its Workers to perform their assigned duties. The Contractor will provide each Worker with the following protective equipment: hard hat, safety glasses, and steel-toed leather shoes. All additional protective equipment and replacement protective equipment is the responsibility of the Subcontractor. The Subcontractor is responsible for ensuring compliance with all applicable safety and health requirements and regulations, safety and health oversight, inspections, and audits. Subcontractor shall maintain an accident reporting system acceptable to the Contractor and shall immediately forward to Contractor a copy of each accident report involving injuries to or death of any Worker furnished hereunder. Subcontractor shall be responsible for maintaining the OSHA 100 Form and recording and posting any reportable accidents and injuries to a Worker on its OSHA 200 Form.
3. During term of assignment to Subcontractor, the risk of any loss, damage, or liability arising out of the actions of the Worker shall be with and upon the Subcontractor and not with and upon the Contractor.

4. The Contractor shall be responsible for the payment of all compensation and other benefits to the Workers and for the required withholding; including applicable taxes, relating to compensation and other benefits paid to the Worker. The charge-out rate for the Worker shall include such costs.
5. The Subcontractor shall supply to the Contractor, in such form and substance and for such time intervals as the Contractor shall reasonably require, reports detailing the hours worked by each Worker, the task numbers or other work/project designations assigned to that Worker's hours, and any other similar information reasonably requested by the Contractor.
6. The Subcontractor shall cooperate fully and at its own expense with the Contractor in resolving all disputes with a Worker or the Worker's union, and shall bear the cost of any decision or award resulting from the resolution of a dispute under the provisions of the PLA. The provisions of this paragraph are without prejudice to Contractor's other rights as established and set forth in this Subcontract.
7. The Subcontractor shall be solely responsible for proving the proper charge numbers to the Workers; reviewing, approving, and signing the timecards; and transmitting the timecards to the Contractor.
8. The Contractor shall be responsible to provide fully trained Workers and the Contractor shall pay for all required training time and materials for all Workers. The Subcontractor shall allow time for the Workers to attend the required training.
9. Any expenses or costs chargeable to the Subcontractor under this clause shall be allowable unless made unallowable by other provisions of this Subcontract.

SP.37 RADIOLOGICAL HEALTH REQUIREMENTS

General

The Subcontractor (including all lower-tier subcontractors) shall ensure the following requirements are met when performing work in radiological areas at RFETS to ensure compliance with the personnel monitoring and recordkeeping requirements of 10 CFR 835. Radiological areas for the purpose of this clause are those areas that must be posted as a "Radiation Area," "High Radiation Area," "Very High Radiation Area," "Contamination Area," "High Contamination Area," or "Airborne Radioactivity Area" in accordance with 10 CFR 835 § 835.603 or posted as a "Radiological Buffer Area" in accordance with Article 233 of the RFETS Radiological Control Manual.

Recordkeeping Requirements

The Subcontractor shall maintain records for each employee that demonstrate compliance with all requirements shown below. These records shall be retained for three (3) years after final payment for this Subcontract, and shall be made available for the Contractor's review upon request.

In-Processing Requirements

The Subcontractor shall—

1. ensure all Subcontractor employees working in radiological areas at RFETS who require a dosimeter (TLD) badge, in-process with the External Dosimetry and Radiological Records sections before beginning the work. The Subcontractor shall provide the External Dosimetry section (303-966-2736) with twenty-four (24) hour verbal notice when it intends to have ten (10) or more employees in-process on the same day.
2. ensure all Subcontractor employees provide information requested from both the External Dosimetry and Radiological Records sections (i.e., address, year-to-date dose information, etc.). Subcontractor employees who fail or refuse to provide the requested information will not be issued a dosimeter (TLD) badge and will be disqualified from performing radiological work at the RFETS.
3. ensure Radiological Worker II qualified Subcontractor employees working in radiological areas at RFETS in process with the External Dosimetry, Internal Dosimetry and Radiological Records sections for entry into the Routine Bioassay Program. The Subcontractor shall ensure Radiological Worker II qualified Subcontractor employees comply with the entrance bioassay requirements specified by the Internal Dosimetry section. These requirements may include urine sampling and/or lung counting. Subcontractor employees who fail or refuse to provide any of the requested bioassays shall have their dosimeter (TLD) badge revoked and will be disqualified from performing radiological work at the RFETS. Unless the Internal Dosimetry section grants an exemption, entrance bioassay requirements shall be completed before beginning work in radiological areas. Lung counting requires at least fourteen (14) calendar days advanced notice.
4. ensure Radiological Worker II qualified Subcontractor employees classified as "Visitors" (i.e., employees who are at the RFETS for a tour, walk-through inspection, etc., and will not be performing any "hands-on" work or entering any High Contamination Areas or Airborne Radioactivity Areas) who do not desire to be entered into the Routine Bioassay Program, decline participation in writing to the Internal Dosimetry section. Radiological Worker II qualified Subcontractor employees classified as "Visitors" who decline participation in the Routine Bioassay Program will be issued a dosimeter (TLD) badge with an expiration date and a "V" number.

Ongoing Maintenance Requirements

The Subcontractor shall—

1. ensure dosimeter (TLD) badges are used and stored by Subcontractor employees in accordance with RFETS requirements.
2. ensure dosimeter (TLD) badges are returned to the designated storage location board when not being worn.
3. ensure Subcontractor employees notify the External Dosimetry section prior to relocating their dosimeter (TLD) badges to another storage location board.
4. ensure the External Dosimetry section is immediately notified of any lost, missing, or damaged dosimeter (TLD) badges. The Subcontractor may be assessed \$550.00 for each dosimeter (TLD) badge found to be damaged or not returned to the External Dosimetry section. The charge shall be deducted from payments otherwise due the Subcontractor.
5. ensure Subcontractor employees who are entered in the Routine Bioassay Program notify the Internal Dosimetry section (303-966-4172) when their RFETS mailing address (i.e., building number) or their manager changes.
6. ensure Subcontractor employees either respond to requests for routine urine samples and/or lung counts by the dates shown on the request card, or contact the Internal Dosimetry section for an extension of time. If the Subcontractor employee fails to respond to a request for routine bioassay, a second request will be sent to the manager specified in the Internal Dosimetry section's records. If the Subcontractor's employee fails to respond to the second request for a routine bioassay, the employee's dosimeter (TLD) badge will be revoked and the employee will be disqualified from performing radiological work at RFETS.
7. ensure Subcontractor employees submit special bioassay samples when requested by Internal Dosimetry (as the result of a potential intake accident—contamination, wound, airborne radioactivity, etc.), and ensure employees are restricted from radiological work until the requested samples are provided. The Subcontractor shall comply with any restrictions imposed on its employees. This may include restrictions until all sample results are received for high-level potential intakes.
8. ensure Subcontractor employees are made available at the Subcontractor's expense, both during and after the period of performance of this subcontract, for interview or bioassay sampling. This sampling may include lung counting at RFETS, if required by the Internal Dosimetry section in the event of an on-going internal exposure investigation or an external dose reconstruction.

Out-Processing Requirements

The Subcontractor shall—

1. ensure Subcontractor employees who end their employment at the RFETS out-process with the Radiological Records section and be given an opportunity to request either a termination dose estimate and/or a termination dose report. The employee or the Subcontractor shall provide each departing employee's forwarding address to the Radiological Records section so the Contractor can send the Subcontractor employee an Annual Summary Dose Report ("Report Card").
2. ensure Subcontractor employees return their dosimeter (TLD) badge to the External Dosimetry section during their out-processing. Subcontractor may be assessed \$550.00 for each dosimeter badge Subcontractor employees fail to return. This charge shall be deducted from payments otherwise due the Subcontractor. In addition, employees who fail to return the dosimeter (TLD) badge at the end of employment at RFETS may be ineligible for future work at RFETS.
3. ensure that Subcontractor employees who require an exit bioassay out-process with the Internal Dosimetry section. This includes employees who are currently Radiation Worker II qualified, were formerly Radiation Worker II qualified, or were in the bioassay program at any point in time (i.e., former "hands-on" workers even though they were not performing work under this Subcontract as Radiation Worker II qualified). The exit bioassay method shall be as specified by the Internal Dosimetry section and shall be performed after the completion of all work for which there is a potential for intake of radioactive materials. The Subcontractor shall contact the Internal Dosimetry section at least fourteen (14) calendar days in advance of any employee's departure to determine whether an exit bioassay is required. If an exit bioassay is required, the Subcontractor shall ensure that its employees comply with the exit bioassay instructions from the Internal Dosimetry section.
4. ensure Subcontractor employees do not re-enter Contamination Areas, High Contamination Areas, and Airborne Radioactivity Areas after completion of the exit bioassay. Subcontractor may be assessed \$750.00 per occurrence for failure to ensure Subcontractor employees comply with the exit bioassay requirements. This charge shall be deducted from payments otherwise due the Subcontractor.

The Subcontractor shall flow down this clause to all its lower-tier subcontractors who will perform work in radiological areas at the RFETS.

SP.38 PAYMENT BOND

Subcontractor shall furnish a Payment Bond described below as security for the faithful payment of all Subcontractors' obligations under the Subcontract. This bond shall remain in effect at least until one year after the date when final payment

becomes due, except as otherwise provided by law or regulation or the Subcontract. All bonds shall be substantially in the form and format of the American Institute of Architects (AIA) Document Form A311 or as otherwise approved in writing by the SA. All bonds shall be issued by a firm that has a rating of A- or greater with A.M. Best. All bonds signed by an agent must be accompanied by a certified copy of the authority to act.

Subcontractor shall furnish a Payment Bond, with the penal sum of such Payment Bond determined as follows:

1. 50 percent of the Subcontract Price where such amount does not exceed \$1,000,000
2. 40 percent of the Subcontract Price where such amount is more than \$1,000,000 but less than \$5,000,000
3. \$2,500,000 where the Subcontract Price exceeds \$5,000,000.

If the surety on any bond furnished by Subcontractor is declared a bankrupt or becomes insolvent or its right to do business is terminated, Subcontractor shall, within five days thereafter, substitute another bond and surety, both of which must be acceptable to Contractor.

If any surety upon any bond furnished in connection with this Subcontract becomes unacceptable to Contractor or if any such surety fails to furnish reports as to its financial condition from time to time as requested by Contractor, or if the Subcontract price is increased to such an extent that the penal sum of any bond becomes inadequate as set forth above, Subcontractor shall promptly furnish such additional security as may be required to protect the interest of Contractor and of persons supplying labor and materials in the execution of the Subcontract's Statement of Work.

SP.39 QUALITY ASSURANCE REQUIREMENTS

The services provided under this Subcontract shall be provided in accordance with Subcontractor's Quality Assurance system, which has been evaluated and approved in writing by Contractor's Quality Assurance organization. The Subcontractor shall maintain and implement this quality system in accordance with the intent of DOE Order 414.1A and 10 CFR 830.122, as applicable. The Subcontractor shall extend applicable requirements to all lower-tier subcontractors, including the Contractor's right of access to facilities and records.

The Contractor shall have right of access to Subcontractor's, and any lower-tier subcontractor's facilities and records for inspection or audit by Contractor, its designated representative, and/or other parties authorized by Contractor at mutually agreed times. This shall include, but not be limited to, the right to audit material, test, inspection services, and quality records; make surveillance visits during manufacturing; and witness tests to the extent Contractor deems necessary throughout the life of the Subcontract to ensure that work is being performed in accordance with applicable requirements.

Subcontractor shall not make any substitutions without specific written approval of the Contractor. This includes any changes to the approved Subcontractor design, specifications, and drawings.

SP.40 DISPOSAL OF WASTE

Subcontractor (including all lower-tier subcontractors) is responsible for maintaining compliance with all Federal, state, and local laws, and all Site requirements in the management and disposal of any waste generated in the performance of this Subcontract. Waste, for purposes of this clause, means any material that has been discarded, abandoned, recycled, reclaimed, or is no longer being used for its originally intended purpose and is to be managed at an off-Site waste management facility (including treatment, storage, disposal, recycling, reclaiming, and/or processing facility).

In accordance with RFETS Procedure 1-MAN-037-OWMP, Offsite Waste Management Program, before entering into an agreement or arrangement with a waste management facility, Subcontractor shall ensure that the facility has been approved for use by the Contractor. Subcontractor is prohibited from using a waste broker unless Contractor has granted specific written authorization for the use of the broker. Additionally, all commercial motor carriers used for the off-Site shipment of waste shall be approved in accordance with Site Procedure I-T95-Traffic-120, or the most current RFETS off-Site transportation requirements manual. The approval or denial of any facility or commercial carrier shall be at the sole discretion of Contractor. Contractor shall not be liable to Subcontractor for any costs or damages of any kind if Contractor refuses or fails to approve the use of a Facility or commercial carrier.

All off-Site waste shipments must be coordinated with the Site Traffic Department before leaving the Site. Motor carriers, vehicle operators, motor vehicles, and waste packages shall be subject to inspection and evaluation before loading. Any delays encountered or extra costs incurred by Subcontractor due to failure to comply with this requirement shall be the sole responsibility of Subcontractor.

The disposal of any waste with scrap value must be handled in accordance with the Contractor's Property Disposal Manual and in those situations where the property has been sold and title transferred on-Site, the above limitations on use of approved facilities are not applicable.

SP.41 MATERIALS

All equipment, material, and articles incorporated into the work covered by this Subcontract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Subcontract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Subcontractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contractor, is equal to that named in the specifications, unless otherwise specifically provided in this Subcontract.

The Subcontractor shall obtain the Contractor's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Subcontractor provide full information concerning the material or articles, including the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this Subcontract or by the Contractor, the Subcontractor shall also obtain the Contractor's approval of the material or articles that the Subcontractor contemplates incorporating into the work. When directed to do so, the Subcontractor shall submit samples for approval at the Subcontractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

SP.42 SITE ACCESS AND TRANSPORTATION REQUIREMENTS

General

Vehicles entering the Site shall comply with Site traffic controls and posted speed limits; failure to do so may result in denial of access to the Site. In the event of a security or emergency response occurring in the vicinity of the Subcontractor or delivery vehicle, pull to the side of the road, stop the vehicle, and yield to emergency response vehicles.

Point of Entrance and Instructions

Vehicles must enter the Site at Highway 93, West Gate Entrance. After the driver is authorized to enter the Site, the driver may proceed directly to the job site, unless the vehicle is transporting Hazardous Materials as defined in 29 CFR Section 1910.1200, in which case the driver shall comply with the requirements in the clause in the Subcontract General Provisions, Hazardous Materials Requirements.

Security Requirements

The following shall not be brought onto the Site without the prior approval of the Contractor:

1. any dangerous weapon, explosive, or other dangerous instrument or material likely to product substantial injury or damage to persons or property
2. illegal drugs, drug paraphernalia, and alcoholic beverages
3. other articles prohibited by law
4. children under the age of 18
5. pets.

In addition, all photography is controlled on the Site. Cameras may not be used without a Rocky Flats Camera Pass.

High Security Area Prohibited Items

The following privately owned articles shall not be brought into high security areas on the Site unless properly authorized in advance by the Contractor:

1. privately owned recording equipment such as audio, video, optical, or data
2. electronic equipment with data exchange port capable of being connected to automated information system equipment (not including personal organizers, calculators, wrist watches, and data diaries, provided such equipment is not operated in close proximity to any classified discussions or data processing and remains under the control of the owner)
3. cellular telephones
4. radio frequency transmitting equipment
5. computers and associated media.

Security and Safety Inspections

Inspections in search of prohibited items are conducted at the West Gate upon entrance as well as at random at any point while a vehicle is on Site. Vehicles found to be transporting prohibited item(s) shall be denied access to the Site. Commercial vehicles are subject to safety and compliance inspections at any time while on the Site. Unsafe vehicles will be removed.

Photo Identification

All persons entering the Site must have official photo identification in their possession (valid state driver's license, military identification card, valid state identification card, US Immigration and Naturalization Foreign National Registration card, or passport).

Non-US Citizens

Site access by persons who are not US Citizens requires advance approval and a special security plan. The only exception is that non-US citizens possessing valid US Immigration and Naturalization identification permitting work in the US (Resident Alien ID, "Green Card," Work Permit), may be badged and must obtain a visitor badge or a Department of Energy (DOE) Standard Badge prior to entering the Site.

Visitor Badges and DOE Standard Badges are issued at the Badging Office located in Building 60 outside the west entrance to the Site. Badging Office hours are 6:30 am to 4:00 pm, Monday through Thursday, and 6:30 am to 3:00 pm on working alternate Fridays.

Access Badges and Parking Permits

Access badges and parking permits for Subcontractor personnel requiring recurring access to RFETS are issued by Personnel Security in Building 060 near the west entrance of the Site. Badging Office hours are currently 6:30 am to 4:00 pm, Monday through Thursday, and 6:30 am to 3:00 pm, on working alternate Fridays. Contact (303) 966-6169 to verify that there has been no change.

The Subcontractor shall—

1. ensure each Subcontractor and lower-tier subcontractor employee, requiring access to the Site obtains an access badge and parking permit.
2. ensure that each Subcontractor and lower-tier subcontractor employee is personally responsible for the employee's access badge and ensure all lost access badges are reported to Personnel Security at the West entrance immediately after the loss is discovered, and return access badge to the Building 060 issuing office when the—
 - a. Subcontract period of performance has expired
 - b. Badge is no longer required
 - c. Badge becomes void for any reason.

Personnel Security shall provide subcontractor employee a receipt when employee's badge is surrendered to Personnel Security.

If an individual forgets or loses an access badge three (3) times within twelve (12) consecutive months, future access to the Site may be denied to the individual.

Subcontractors will be assessed \$250.00 for each access badge not returned as required above. This charge shall be deducted from payments otherwise due the Subcontractor.

Except as otherwise authorized in writing by the Contractor, the Subcontractor shall insert this provision into all lower-tier subcontracts and purchase orders under this Subcontract.

SP.43 CONTRACTOR FURNISHED SERVICES AND ITEMS

1. The Contractor shall deliver to the Subcontractor, at the time and locations stated in this Subcontract, the Contractor Furnished Services and Items (CFS/I) described as attached hereto. If such services or items, suitable for their intended use, are not delivered to the Subcontractor, the Contractor shall equitably adjust affected provisions of this Subcontract in accordance with the Changes clause when –
 - a. The Subcontractor submits a timely written request for an equitable adjustment; and
 - b. The facts warrant an equitable adjustment.
2. Title to Contractor-furnished items shall remain in the Contractor. The Subcontractor shall use the Contractor-furnished items only in connection with this Subcontract. The Subcontractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for Contractor inspection at all reasonable times.
3. Upon delivery of Contractor-furnished items to the Subcontractor, the Subcontractor assumes the risk and responsibility for its loss or damage, except—
 - a. for reasonable wear and tear;
 - b. to the extent property is consumed in performing this subcontract; or
 - c. as otherwise provided for by the provisions of this subcontract.
4. Upon completing this Subcontract, the Subcontractor shall follow the instructions of the Contractor regarding the disposition of all Contractor-furnished items not consumed in performing this Subcontract or previously delivered to the Contractor. The

Subcontractor shall prepare for shipment, deliver to the Contractor, or dispose of the Contractor-furnished items, as may be directed or authorized by the Contractor. The net proceeds of any such disposal shall be credited to the Subcontract price or shall be paid to the Contractor as directed by the Contractor.

5. Contractor's commitment to provide CFS/I including the specific services, items, availability, lead time, and pricing are set forth in the CFS/I attachment. Contractor's commitment to provide CFS/I under this Subcontract is based upon the Contractor-approved schedule including time-phased CFS/I. Contractor shall provide the baseline approved CFS/I identified on the CFS/I attachment to the Subcontractor at no cost to the Subcontractor.
6. Each updated schedule submittal shall be reviewed by Contractor. If Contractor cannot provide the requested CFS/I, Contractor will identify in writing no later than ____ *[Insert number of days]* calendar days after receipt of Subcontractor's request that the requested CFS/I cannot be provided.
7. Any increases to Subcontractor's requested CFS/I from that included in the baseline schedule, including type, quantity, duration, etc. shall be deducted from the Subcontract price at the rates set forth on the CFS/I attachment. Failure of the Contractor to provide additional quantities shall not be considered an excusable delay, nor shall the Subcontractor be entitled to an equitable adjustment based on the Contractor's failure to provide additional quantities of CFS/I over the quantities listed in the CFS/I attachment.
8. CFS/I pricing deductions for using the CFS/I above the amounts specified in CFS/I attachment shall be tracked by Contractor and deducted from payments due the Subcontractor. The CTR shall provide accounting charge numbers or other similar administrative mechanisms to the Subcontractor for the purpose of tracking actual quantities of CFS/I used.

SP.44 PATENTS

If this Subcontract is with a small business or domestic non-profit organization, as those terms are defined in the clause, Patent Rights and obligations of the parties under this Subcontract are defined by the terms of DEAR 952.227-11, Patent Rights Retention by the Contractor (short form) (Mar 1995), which is incorporated herein by reference and made part hereof, if this is a subcontract with a small business or domestic non-profit organization as those terms are defined in the clause. If this Subcontract is not with a small business or domestic nonprofit organization, the Patent Rights and obligations of the parties are defined by the clause DEAR 952.227-13, Patent Rights – Acquisition by the Government (Sep 1997), which is incorporated herein by reference and made part hereof. The Subcontractor may obtain the full text of the referenced clauses at <http://www.arnet.gov/far/>.

SP.45 KEY PERSONNEL

Subcontractor Key Personnel, if any, are specified in an attachment hereto. *[Insert an attachment for the Key Personnel to be listed.]* Such personnel are considered essential to the work being performed hereunder. Before removing any of these personnel from performing on this Subcontract, the Subcontractor shall notify the Contractor reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this Subcontract. No change shall be made without the written consent of the Contractor.

SP.46 MODIFICATIONS TO GENERAL PROVISIONS

SP.47 SPECIAL PROVISIONS ATTACHMENTS *[List attachments referenced in the SPs—if the clause is checked that includes an attachment. Do not include Exhibits referenced in the General Provisions; those should be listed on the Subcontract Signature Document, not here. Only include those that are appropriate, in accordance with provisions checked.]*

SP.48 SPECIAL PROVISIONS INCORPORATED BY REFERENCE

The FAR and DEAR clauses below that have no blank preceding the reference are applicable to all construction and demolition subcontracts. Those clauses preceded by a blank space are applicable only if an "X" appears in the blank. All applicable FAR and DEAR clauses are incorporated herein by reference with the same force and effect as if printed in full text. Wherever necessary to make the context of the clauses set forth below applicable to this Subcontract, the term "Contractor" shall mean "Subcontractor," the term "subcontractor" shall mean "lower-tier subcontractor", the term "Contract" shall mean this Subcontract, the term "subcontract" shall mean "lower-tier subcontract", and where noted or necessary to derive proper meaning, the terms "Government", "Contracting Officer", and equivalent phrases shall mean Contractor's representative. Except the terms Government and Contracting Officer do not change—

1. in the phrases "Government Property", "Government Furnished Property", and "Government Owned Property",
2. in the patent clauses incorporated herein;
3. when a right, act, authorization, or obligation can be granted or performed only by the Government's duly authorized representative;
4. when title to property is to be transferred directly to the Government;

5. when access to proprietary financial information or other proprietary data is required except for authorized audit rights; and
6. where specifically modified herein.

The following FAR and DEAR clauses that have no blank spaces are applicable to all construction and demolition subcontracts. The clauses that are preceded by a blank space are applicable only if an "X" appears in the blank space. Full-text of the referenced clauses may be found at <http://arnet.gov/far> for FAR clauses and <http://professionals.pr.doe.gov> for DEAR clauses.

- FAR 52.222-6 Davis-Bacon Act (Feb 1995)
- FAR 52.222-7 Withholding of Funds (Feb 1988)
- FAR 52.222-8 Payrolls and Basic Records (Feb 1988)
- FAR 52.222-9 Apprentices and Trainees (Feb 1988)
- FAR 52.222-10 Compliance with Copeland Act Requirements (Feb 1988)
- FAR 52.222-11 Subcontracts (Labor Standards) (Feb 1988)
- FAR 52.222-12 Contract Termination – Debarment (Feb 1988)
- FAR 52.222-13 Compliance with Davis-Bacon and Related Act Requirements (Feb 1988)
- FAR 52.222-14 Disputes Concerning Labor Standards (Feb 1988)
- FAR 52.222-15 Certification of Eligibility (Feb 1988)
- FAR 52.242-3 Penalties for Unallowable Costs (May 2001)
- FAR 52.242-4 Certification of Final Indirect Costs (Jan 1997)
- FAR 52.244-2 Subcontracts (Alt 1) (Aug 1998)
- DEAR 952.247-70 Foreign Travel (Feb 1997)
- DEAR 952.251-70 Contractor Employee Travel Discounts (Jun 1995)
- DEAR 970.5204-79 Access to and Ownership of Records (Jun 1997)
- ___ FAR 52.215-10 Price Reduction for Defective Cost or Pricing Data (Oct 1997) *(Include this clause if cost or pricing data are required to be submitted.)*
- ___ FAR 52.215-12 Subcontractor Cost or Pricing Data (Oct 1997) *(Include if cost or pricing data are required to be submitted.)*
- ___ FAR 52.223-7 Notice of Radioactive Material (Jan 1997) *(Include in subcontracts for supplies that are or that contain (1) radioactive material requiring specific licensing under regulations issued pursuant to the Atomic Energy Act of 1954 or (2) radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries.)*
- ___ FAR 52.224-1 Privacy Act Notification (Apr 1984) *(Include if Subcontractor will be required to design, develop, or operate a system of records on individuals to accomplish an agency function.)*
- ___ FAR 52.224-2 Privacy Act (Apr 1984) *(Include if Subcontractor will be required to design, develop, or operate a system of records on individuals to accomplish an agency function.)*
- ___ FAR 52.227-4 Patent Indemnity—Construction Contracts (Apr 1984) *(Include in demolition subcontracts. Also include in construction subcontracts unless it is determined that the construction will necessarily involve the use of structures, products, materials, equipment, processes, or methods that are nonstandard, noncommercial, or special.)*
- ___ FAR 52.230-2 Cost Accounting Standards (Apr 1998) *(Include unless exempt under FAR Part Appendix 9903.201-1. Exempt contracts and subcontracts include sealed bid contracts; negotiated contracts and subcontracts not in excess of \$500,000; contracts and subcontracts with small businesses; contracts or subcontracts with foreign governments or their agents or instrumentalities; contracts or subcontracts in which the price is set by law or regulation; firm fixed-price or fixed-price with economic price adjustment (provided that price adjustment is not based on actual costs incurred) contracts and subcontracts for the acquisition of commercial items; contracts or subcontracts of less than \$7.5 million, provided that, at time of award, the business unit is not currently performing any CAS-covered contracts or subcontracts valued at \$7.5 million or greater; certain contracts or subcontracts with the United Kingdom or the NATO PHM Ship under certain circumstances; contracts or subcontracts executed and performed outside the US, its territories, or possessions; or firm fixed-price contracts or*

- subcontracts awarded on the basis of adequate price competition without submission of cost or pricing data.)*
- ___ FAR 52.230-6 Administration of Cost Accounting Standards (Nov 1999) *(Include if FAR 52.230-2 is included.)*
- ___ FAR 52.245-5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor Hour Contracts) (Jan 1986) *(Include if Contractor or Government property is furnished to Subcontractor in the performance of the Subcontract.)*
- ___ FAR 52.245-18 Special Test Equipment *(Include if Subcontract requires the acquisition or fabrication of new special test equipment.)*
- ___ FAR 52.245-19 Government Property Furnished "As Is" (Apr 1984) *(Include if Contractor or Government property is furnished to Subcontractor in the performance of the Subcontract.)*
- ___ FAR 52.247-63 Preference for U.S. Flag Carriers (Jan 1997) *(Include if the Subcontract may involve international air transportation.)*
- ___ DEAR 952.204-70 Classification/Declassification (Sep 1997) *(Include if Subcontract involves access to classified information.)*
- ___ DEAR 952.204-74 Foreign Ownership, Control, or Influence over Contractor (Apr 1984) *(Include if Subcontract involves access to classified information or a significant quantity of Special Nuclear Material.)*
- ___ DEAR 952.209-72 Organizational Conflicts of Interest (Alt 1) (Jun 1997) *(Include if Subcontract is expected to exceed \$100,000 for Contractor Advisory and Assistance Services as that term is defined in FAR 37.201. Also include the appropriate representation and certification.)*
- ___ DEAR 970.5204-59 Whistleblower Protection for Contractor Employees (Apr 1999) *(Include if work is to be performed on the Site.)*
- ___ DEAR 952.217-70 Acquisition of Real Property (Apr 1984) *(Include if Subcontractor may acquire real property.)*
- ___ DEAR 952.237-70 Collective Bargaining Agreements—Protective Forces (Aug 1993) *(Include in Subcontracts for protective services.)*
- ___ DEAR 952.245-5 Government Property (Cost Reimbursement, Time-and-Material, or Labor-Hour Contracts) *(Include if the FAR Government Property Clause is included.)*